(2022) 05 NCLT CK 0015

In the National Company Law Tribunal

Case No : C.P (CAA) NO 3 / KB / 2022 Connected With C.A (CAA) NO 184 / KB / 2021

Ashika Global Securities Private Limited Vs

Date of Decision : 09-05-2022

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(1), 230(6), 232, 232(3), 232(3)(i)

Citation : (2022) 05 NCLT CK 0015

Hon'ble Judges : Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Manju Bhuteria, N. Gurumurthy, Madan Kumar Maroti, Aisha Amin, Harihara Sahoo,

Final Decision : Disposed Of

Judgement

Harish Chander Suri, Member (Technical);

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of SHENTRACON TREXIM PRIVATE LIMITED being the Petitioner No.2 above named ("Transferor Company No .1" or "Petitioner No.2 ") and WITHAL COMMERCIAL PRIVATE LIMITED being the Petitioner No.3 above named ("Transferor Company No. 2" or "Petitioner No.3 ") with ASHIKA GLOBAL SECURITIES PRIVATE LIMITED being the Petitioner No.1 above named ("Transferee Company" or "Petitioner No.1") whereby and where under the Transferor Company are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

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

(a) The Scheme was approved by the Board of Directors of the Petitioner No 1 at their meetings held on 23rd August ,2021. by the Board of Directors of the

Petitioner No 2 and Petitioner No 3 at their meetings held on 21st August ,2021

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

a. The TRANSFEREE COMPANY and all the TRANSFEROR COMPANIES are Non-Banking Finance Company duly Registered with Reserve Bank of India and are engaged in Investing and Financing activities. The business of the Transferor Companies and the Transferee Company can be combined/ adjusted and carried forward conveniently with combined strength;

b. The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;

c. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;

d. The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;

e. The business of the Transferor Companies can be conveniently and advantageously combined together and in general with the business of the Transferee Company concerned and will be carried on more economically and profitably under the said Scheme;

f. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Company for raising capital, securing and conducting trade on favorable terms and other benefits;

g. The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;

h. The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;

i. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

j. The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

k. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

(c) The Statutory Auditors of the Petitioner No1 have by their certificate dated 07th September,2021, the Statutory Auditors of the Petitioner No 2 have by their certificate dated 01st September,2021 and the Statutory Auditors of the Petitioner No3 have by their certificate dated 09th September,2021 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

(e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report dated 13th August,2021 thereon of VIKASH GOEL, IBBI, Registered Valuer.

(f) By an order dated 9th December, 2021 in Company Application No. C.A (CAA) No.184/(KB)/2021 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act: -

(a) Meetings dispensed:

Equity Shareholders

Meeting of Equity Shareholders of the Petitioner Companies for considering the Scheme are dispensed with in view of all Equity Shareholders of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

Secured Creditors

Meeting of Secured Creditors of Petitioner No.1 for considering the Scheme are dispensed with in view of consent by 100% in value of secured Creditors of Petitioner No.1 having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

Meeting of Unsecured Creditors of Petitioner No.1 for considering the Scheme are dispensed with in view of consent by 99% in value of Unsecured Creditors of Petitioner No.1 having respectively given their consent to the Scheme by way of affidavits.

(b) No requirement of Meetings

Secured Creditors

Secured Creditors of Petitioner No.2 and Petitioner No.3 – NIL Creditors verified by auditors certificate.

Unsecured Creditors

Unsecured Creditors of Petitioner No.2 and Petitioner No.3 – NIL

Creditors verified by auditors certificate.

(c) Meetings to be held

No meetings required to be held.

(g) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 01st March,2022 the instant petition was admitted by this Tribunal and fixed for hearing on 08th April,2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 01st March,2022 the Petitioner(s) have duly served such notices on the Regulatory Authorities viz Upon Income Tax Authorities on 16th March,2022, Upon Registrar of Companies , Kolkata ,West Bengal and Regional Director, Eastern Region on 15th March,2022 ,Upon Official Liquidator , High Court Calcutta on 15th March,2022, Upon Reserve Bank of India ,Kolkata regional Office on 15th March,2022 . The Petitioner(s) have also published such advertisements once each in the Financial Express and Dainik Statesman in their respective issues dated 15TH March,2022. An affidavit of Compliance duly affirmed on 22nd March,2022 has also been filed.

(h) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), Official Liquidator, High Court have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 05/04/2022 and concluded as under: -

At Para 8

That the Official Liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner till the date of filing of this Report.

At Para 10

That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor 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/the Companies Act, 2013 whichever is applicable.

5. The RD has filed his reply affidavit dated 06TH April,2022 ("RD affidavit") which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 06TH April,2022 ("Rejoinder"). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

Paragraph 2 (a) of RD Affidavit

That it is submitted that on examination of the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns for the year ended 31/03/2021. However, in the said report, the ROC, WB made some observation regarding amount of active charge pending against the Transferee Company M/s Ashika Global Securities Private Limited for Rs.90,00,00,000/- (Copy of the said report marked as Annexure-I is enclosed herewith for perusal and ready reference)

Paragraph 2 (a) of the Rejoinder

No adverse comments made by the Registrar of Companies, West Bengal in his report to the Regional Director. Further the Registrar of Companies, West Bengal has not received any Complaint and / or representation from any person on the proposed Scheme. Hence no comments are required to be offered.

As regards active charges mentioned by the Registrar of Companies in his report to the Regional Director they are against the Petitioner Transferee Company and they continue to appear in the MCA portal. The Transferee Company shall exist even after the sanction of the Scheme. Hence these charges would also continue till the debt are cleared and satisfaction is filed in respect of these charges.

Further the Secured Creditors have given their consent to the proposed Scheme of Amalgamation which has been recorded in the order dated 09-12-2021 passed in Company Application C.P (CAA) NO 184 / KB / 2021.

Paragraph 2 (b) of RD Affidavit

It is submitted that the Transferee Company namely Ashika Global Securities Private Limited and other two Transferor Companies are carrying on NBFC activities and registered with RBI as NBFC. However, no NOC from RBI in the matter is provided yet.

Paragraph 2 (b) of the Rejoinder

The Petitioner Transferor Company is NBFC Company duly registered with Reserve bank of India and holds a valid Certificate of Registration. The Reserve Bank of India vide their letter No KOL. DOS. RSG.NO. S1492 / 99-06-002/ 2021-22 dated 31st March,2022 addressed to the Company have conveyed their NO OBJECTION to the proposed Scheme of Amalgamation . Copy of the letter issued by the Bank is annexed marked – ANNEXURE – B.

Paragraph 2 (c) of RD Affidavit

Petitioner Companies should undertake to comply with the provision of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph 2 (c) of the Rejoinder

The Deponent duly authorised hereby affirms that the Transferee Company undertakes that it shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorized Share Capital(s) of the Transferor Company (ies) with the Authorized Share Capital of the Transferee Company in post-amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC – 28.

Paragraph 2 (d) of RD Affidavit

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph 2 (d) of the Rejoinder

The Transferee Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph 2 (e) of RD Affidavit

The Hon'ble Tribunal may kindly direct the Petitioners to file an 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.

Paragraph 2 (e) of the Rejoinder

The Deponent duly authorised by the Petitioner Companies hereby affirms 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.

Paragraph 2 (f) of RD Affidavit

It is submitted that the Income Tax Department vide its letter no. DCIT/Cir.11(1)/ Kol/Amalgamation /2021 22/683 dated 17.02.2022 stated that the outstanding demand for A.Y. 2018-19 u/s 154 Rs.7,13,610/-, A.Y. 2015-16 U/S 220(2) for Rs.16,302/-, A.Y. 2011-12 u/s 154 for RS.6,80,656/- and A.Y. 2017-18 u/s 143(3) for Rs.30,13,790/-, totaling Rs.44,24,358/- are pending against M/s. Ashika Global Securities Private Limited, Transferee Company. (Copy of the said letter of Income Tax Department marked as Annexure-1 is enclosed herewith for perusal and ready reference).

Paragraph 2 (f) of the Rejoinder

The Income Tax authorities have not made any observations on notice served by the office of the Regional Director in respect of the Petitioner Transferor Companies.

The outstanding Demand relates to the Transferee Company. Even after the Scheme is sanctioned the Transferee Company shall continue to exist and the Income Tax authorities can proceed to recover the same from the Transferee Company.

Further the Petitioner Companies have also complied with the directions contained in the order passed by the Hon’ble Tribunal and have effected service upon the Income Tax Department at dispensation stage and also at the direction in petition stage .

The Assessing Officer under whose Jurisdiction the Petitioner No 2 are assessed to tax have conveyed their No Objection to the proposed Scheme. Copy of the said letter received from the Income Tax Department is annexed marked – ANNEXURE– C.

Heard submissions made by the Ld Counsel appearing for the Petitioner, RD. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

a) The Scheme of Amalgamation mentioned in this Petition being Annexure “A” hereto be sanctioned by this Tribunal to be binding with effect from 1st day of April, 2021 on SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED with ASHIKA GLOBAL SECURITIES PRIVATE LIMITED and their shareholders and all concerned;

b) All the properties, rights and interest of SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED be transferred to and vested in without further act or deed in ASHIKA GLOBAL SECURITIES PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in ASHIKA GLOBAL SECURITIES PRIVATE LIMITED for all the estate and interest of SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED but subject nevertheless to all charges, now affecting the same;

c) All the liabilities and duties of SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED be transferred without further act or deed to ASHIKA GLOBAL SECURITIES PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of ASHIKA GLOBAL SECURITIES PRIVATE LIMITED;

d) That all the proceedings and/or suit appeals now pending by or against SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED shall be continued by or against ASHIKA GLOBAL SECURITIES PRIVATE LIMITED;

e) The Transferee Companies do issue and allot shares to the shareholders of SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital;

f) The schedule of assets in respect of SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED be filed within a period of 60 days from the date of the order to be made herein;

g) The Transferor Companies namely SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED shall stand dissolved from the appointed date ;

h) ASHIKA GLOBAL SECURITIES PRIVATE LIMITED, SHENTRACON TREXIM PRIVATE LIMITED and WITHAL COMMERCIAL PRIVATE LIMITED shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively;

i) Any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;

6. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

7. The Company Petition C.P (CAA) No. 3/KB/2022 connected with Company Application C.A(CAA) NO 184 /KB/ 2021 is disposed of accordingly.

8. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

