(2022) 10 NCLT CK 0053

In the National Company Law Tribunal

Case No : CA (CAA) No. 54/Chd/Hp/2022 (First Motion)

Baljees Caterers Private Limited Vs

Date of Decision : 28-10-2022

Acts Referred:

Companies Act, 2013 — Section 133, 210, 230, 230(2)(c), 232, 232(3)

Citation : (2022) 10 NCLT CK 0053

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

Bench : Division Bench

Advocate : S.P.S Chawla, Vishav Bharti Gupta

Final Decision : Allowed

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint first motion application filed by Applicant Companies namely; BALJEES CATERERS PRIVATE LIMITED (Demerged Company/Applicant Company No. 1); SUMITA BALJEE ESTATE PRIVATE LIMITED (Resulting Company No. 1/ Applicant Company No. 2) and NAMITA GANDHI CATERERS PRIVATE LIMITED (Resulting Company No. 2/Applicant Company No.3) under Sections 230-232 of 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 Arrangement between the Applicant Companies. The said Scheme of Arrangement is attached as Annexure-A8 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders and Secured and Unsecured Creditors of all the Applicant Companies.

3. The Applicant Company No. 1 & 3 is presently engaged in the business to manufacture and deal with all kinds of Ice Creams, Ice Cream Packaging, vending machine, fruit and vegetable processing and packaging.

4. The Applicant Company No. 2 is presently engaged in the business of

construction, developing, occupying, maintaining and selling of building, residential units, flats, hotels, restaurants, commercial building, public infrastructure and other buildings of any nature as the case may be.

5. It is submitted that the registered offices of Applicant Companies are situated in the State of Himachal Pradesh, therefore, the territorial jurisdiction of all Applicant Companies fall with this Bench.

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

"1.1 The demerger of Baljees Caterers Private Limited or the Demerged Undertaking of the Demerged Company into a separate entities i.e., Resulting Companies will enable all the companies to focus on their respective businesses, efficient management, control and running and to exploit business opportunities more efficiently and effectively.

1.2 The proposed Scheme is in line with the current global industry practice to achieve size, scalability, integration, greater financial strength and flexibility thereby maximizing shareholder value and to achieve higher long-terms financial returns and will enable investors to separately hold investments which best suit their investment strategies and risk profiles."

7. As per the present Scheme of Arrangement (Annexure A8 of the application), the Demerged undertaking i.e Catering business including the Bakery Building and Flat of the demerged company would be transferred on a going concern basis to the resulting companies on and from the appointed date.

8. It is stated that the Board of Directors of the Applicant Companies in their meetings held on 13.06.2022 have considered and unanimously approved the Scheme of Arrangement subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are attached as Annexure-A9 of the application.

9. The appointed date of the Scheme is 01.04.2022 as mentioned in the Para 2.3 of Scheme of Arrangement which is attached as Annexure A8 of the application.

10. It is stated that Applicant Company No. 1 has filed the audited financial statements as on 31.03.2021 as Annexure-A2 of the application. The Applicant Company no. 1 has filed provisional Financial Statements as on 28.02.2022 and Applicant Company No. 2 and 3 have also filed provisional Financial Statements as on 15.05.2022 as Annexure A2, A4 and A6, respectively of the application.

11. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, Applicant Company No. 1 has filed certificate dated 08.07.2022 and Applicant Company No. 2 & 3 have filed certificates dated 23.08.2022 issued by Statutory Auditors certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure-A21 of application.

12. It is further submitted that the valuation report has been submitted by

Pensar Valuation private limited, Registered Valuer having IBBI registration No.- IBBI/RV-E/02/2022/162 which is attached as Annexure- A20 of Application. As per valuation report dated 10.06.2022, the following Fair Exchange Ratio has been proposed:-

"14 (Fourteen) fully paid-up equity shares in Sumita Baljee Estate Private Limited of INR 10/- (Rupees Ten only) each for every 1 (One) fully paid-up equity share of INR 10/- (Rupees Ten only) each in Baljees Caterers Private Limited.

19.5 (Nineteen and a half) fully paid-up equity shares of INR 10/-(Rupees Ten only) each in Namita Gandhi Caterers Private Limited for every 1 (One) fully paid-up equity share of INR 10/- (Rupees Ten only) each held in Baljees Caterers Private Limited."

13. It is submitted that the Scheme [Annexure -A8 of the application] also takes care of the interests of the workmen and staff (employees) of the Companies, by virtue of Clause 4.3 and 5.1 of the Scheme.

14. It is deposed by the authorized signatories that there are no pending investigations or proceedings against the Applicant Companies under Section 210 of the Companies Act, 2013. The proposed Scheme of Arrangement between Applicant Companies ("Scheme") does not include any reduction or buy back of share capital of the Applicant Companies neither the provisions of the Competition Act are involved. The Scheme is not a corporate debt restructuring scheme and hence a creditor's responsibility statement and other requirements under Section 230(2)(c) are not applicable to the present case. There are no other Sectoral Regulators apart from the Central Government through Regional Director (North), and Registrar of Companies and Income Tax Authorities. The aforesaid affidavit has been attached at Page No. 44 to 47 of the application.

15. The applicant companies have furnished the following documents:-

i. Proposed Scheme of Arrangement (Annexure-A8 of the application)

ii. Certificate Of Incorporation along with Memorandum and Articles of Association of the applicant companies (Annexures-A1, A3 and A5 respectively of the application).

iii. List of Equity Shareholders of the applicant companies as on 13.06.2022 alongwith the consent furnished by way of affidavits (Annexures-A10 and A11, A14 and A15, A17 and A18 respectively of the application).

iv. List of Secured Creditors and Unsecured Creditors of the applicant companies duly certified by Anand Tarun and Co., Chartered Accountants as on 01.07.2022 (Annexures-A12, A13, A16 and A19 respectively of the application).

v. Certificates of Statutory Auditors dated 08.07.2022 and dated 23.08.2022 issued by Statutory Auditors to the effect that Accounting treatment proposed in the Scheme is inconformity with Section 133 of Companies Act, 2013 (Annexure-A21 of the application).

vi. Proposed Share Exchange Ratio and valuation report (Annexure-A20 of the application.

vii. Audited Financial Statements as on 31.03.2021 of Applicant Company no. 1 and provisional Financial Statements as on 28.02.2022 of Applicant Company no. 1. (Annexure A2 of the application)

viii. Provisional Financial Statements as on 15.05.2022 of Applicant Company No. 2 and 3 (Annexure A4 and A6, respectively of the application.)

ix. Affidavit with regard to the legal proceedings and Sectoral Regulators (Page No. 44 to 47 of the Application).

16. The Demerged Company/Applicant Company No. 1 i.e. Baljees Caterers Private Limited, CIN: U55204HP1980PTC004355 is a private limited company incorporated under the Companies Act, 1956 on 22.12.1980. The Resulting Company No. 1/Applicant Company No. 2 i.e. Sumita Baljee Estate Private Limited, CIN: U70109HP2021PTC008969 is a private limited company incorporated under the Companies Act, 2013 on 17.11.2021. The Resulting Company No. 2/Applicant Company No. 3 i.e. Namita Gandhi Caterers Private Limited, CIN: U55201HP2021PTC008976 is a private limited company incorporated under the Companies Act, 2013 on 23.11.2021.

17. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors along with consent on affidavits which is as follow:

Name of the Applicant Companies

Shareholders along with their consent on affidavits

Creditors along with their consent on affidavits

Equity Shareholder

Consent submitted on Affidavits

Secured Creditors

Consent submitted on Affidavit

Unsecured Creditors

Consent submitted on affidavit

Applicant Company No.1

3

(Three)

100%

in value

Nil

NA

NIL

NA

Applicant Company No.2

3

(Three)

100%

in value

Nil

NA

Nil

NA

Applicant Company No.3

3

(Three)

100%

in value

Nil

NA

Nil

NA

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

I. In relation to the Demerged Company/Applicant Company No.1:

a) The meeting of the Equity Shareholders of Demerged Company/Applicant Company No.1 is dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent has been received by way of affidavits.

b) Since, there are Nil Secured and Nil Unsecured Creditors in the Demerged Company/Applicant Company No.1. Therefore, there is no scope for any meeting.

II. In relation to the Resulting Company No.1/Applicant Company No.2:

a) The meeting of the Equity Shareholders of Resulting Company No.1/Applicant Company No.2 is dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent by way of affidavits has been received.

b) Since, there are Nil Secured Creditors and Nil Unsecured Creditors in the Resulting Company No.1/Applicant Company No.2, therefore there is no scope for any meeting.

III. In relation to the Resulting Company No 2/Applicant Company No.3:

a) The meeting of the Equity Shareholders of Resulting Company No. 2/Applicant Company No.3 is dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent has been received by way of affidavits.

b) Since, there are Nil Secured Creditors and Nil Unsecured Creditors in the Resulting Company No. 2/Applicant Company No.3. Therefore, there is no scope for any meeting.

19. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies and (c) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.