

(2020) 05 NCLT CK 0048

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. CAA-149/PB Of 2019, Company Application No. CAA-112/PB Of 2019

Best Agrochem Private Limited

APPELLANT

Vs

Best Agrolife Limited

RESPONDENT

Date of Decision : 05-05-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 05 NCLT CK 0048

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : P. Nagesh, Afnaan Siddiqui, Suman Kumar Jha, Zohaib Hussain, Tania Sharma

Final Decision : Disposed Of

Judgement

B.S.V. Prakash Kumar, J

1. This Joint Petition has been filed by the Petitioner Companies under section 230-232 of Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred to as the "Scheme") has been placed on record.

2. A perusal of the Petition discloses that initially the First Motion application seeking directions for dispensing/convening with the meetings of Equity Shareholders and Creditors was filed before this Bench vide Company Application (CAA) No. 112/(PB)/2019 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.

3. Thereafter, on 08.11.2019 the Petitioner Companies was directed to carry out publication in the newspapers "Business Standard" (English, Delhi Edition) and "Business Standard" in vernacular (Hindi, Delhi Edition). In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Official Liquidator, Registrar of Companies (NCT of Delhi and Haryana) and to the Income Tax Department.

4. It is seen from the records that the Petitioner Companies has filed an affidavit dated 10.12.2019 affirming compliance of the order passed by the Tribunal dated 08.11.2019. A perusal of the affidavit discloses that the Petitioner Companies have affected the newspaper publication as directed in one issue of the "Business Standard" (English, Delhi Edition) and "Business Standard" in vernacular (Hindi, Delhi Edition) on 05.12.2019 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of the petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed on record.

5. It is pertinent to state here that at the time of final hearing on 02.03.2020, the Ld. Counsels on behalf of the Income Tax Department, Official Liquidator and Regional Director have not raised any objection in respect of the approval of the Scheme.

6. Certificates of respective Statutory auditors of the Petitioner Companies has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

7. It is pertinent to note that the Income Tax Department vide its report dated 25.11.2019 with respect to Best Agrochem Private Limited (Transferor Company) has filed its report wherein it has been observed that it has no objection to the Scheme, if Transferee Company undertakes to pay all outstanding demands of Transferor Company. In response to aforesaid observation Transferee Company vide its affidavit dated 16.12.2019 has undertook to pay all outstanding demands of Transferor Company on approval of Scheme. The Observation of Income Tax stands satisfied. The Income Tax Department vide report dated 26.11.2019 with respect to Transferee Company has issued its no objection to the Scheme without any observations.

12. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting the exemption from payment of stamp duty, taxes or any other charges, if any, 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.

13. THIS TRIBUNAL DO FURTHER ORDER WITH RESPECT TO TRANSFEROR

COMPANY AND TRANSFEREE COMPANY

1. That the Transferor Company shall stand dissolved without following the process of winding-up; and
2. That all the property, rights and powers of 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 Companies Act, 2013, be transferred to and vest in the Transferee Company; and
3. That all the liabilities and duties of 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 become the liabilities and duties of the Transferee Company; and
4. That all proceedings now pending by or against the Transferor Company, be continued by or against the Transferee Company; and.
5. That all the employees of the Transferor Company, in service, 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 condition not less favorable than those subsisting in the Transferor Company on the said date;
6. The Petitioner Companies to lodge a copy of this order and. the Scheme duly certified by Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Principal Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same, within 60 Days from date of receipt of copy of order.
7. 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 concerned Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the concerned Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to both the Companies shall be consolidated accordingly; and
8. That 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.