(2023) 02 NCLT CK 0050

In the National Company Law Tribunal

Case No : CP (CAA) No.70/Chd/Hry/2022

Bharti Land Limited Vs

Date of Decision : 22-02-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232
Income Tax Act, 1961 — Section 170(2A)

Citation : (2023) 02 NCLT CK 0050

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

Bench : Division Bench

Advocate : Atul V. Sood, Pradyumna Sharma, Yogesh Putney, Yatin Chadha

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint second motion company petition filed by the Petitioner-Companies, namely, Bharti Land Limited (Petitioner Company No.1/Demerged Company No.1), Bharti Realty Limited (Petitioner Company No. 2/Demerged Company No.2/Resulting Company No.1), and Rostrum Realty Private Limited (Petitioner Company No.3/Resulting Company No.2) under Section 230-232 of the Companies Act, 2013 (the Act) read with Companies (compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the petitioner companies.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure P-1 of the petition.

3. The first motion application seeking directions for dispensing/convening with the meetings of the Equity Shareholders, Debenture Holders , Preference Shareholders and Secured Creditors and Unsecured Creditors of Applicant Companies was filed before this Tribunal vide CA (CAA) No.23/Chd/Hry/2022 and based on such an application necessary directions were issued on 30.06.2022. As

per the order dated 30.06.2022, the meetings of Equity Shareholders of all the Applicant Companies and Debenture Holders of Applicant Company No.1, Preference Shareholders of Applicant Company No.2 and Unsecured Creditors of Applicant Company No.3 were dispensed with for the reasons recorded in the aforementioned order. The meetings of secured creditors of Applicant Company No.2 and Unsecured Creditors of Applicant Company No.1 and 2 were to be convened on 10.09.2022.

4. It is submitted that the registered offices of the Applicant Companies are situated in the State of Haryana and, therefore, all the Applicant Companies are under the territorial jurisdiction of this Bench.

5. The main objects, date of incorporation, authorized and paid-up share capital and the rationale of the Scheme have been discussed in detail in the order dated 30.06.2022.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 30.09.2022 and the same were compiled by filing affidavits vide Diary No.02326/01, Diary No.02326/02 and Diary No.02326/3, all dated 01.12.2022. The notice of hearing was published by Petitioner Companies in "Financial Express" (English) and "Jansatta" (Hindi) both in Delhi NCR edition on 03.11.2022 and the original copies of the newspapers are attached as Annexure-2 of the aforesaid affidavits. It has also stated in the affidavits that copies of notices were served upon the (1) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (2) The Concerned Registrar of Companies (3) the jurisdictional Income Tax Authorities, by way of speed post/courier. Speed Postal Receipts and courier receipts along with tracking reports evidencing service of notices are attached as Annexure-2 and Annexure-3 of the aforesaid affidavits.

7. It is deposed by the authorized signatories of the applicant companies that in furtherance of the advertisement published in the newspaper dated 03.11.2022, the petitioner companies have not received any notice of the objection/opposition from the aforesaid second motion petition from any third party. The aforesaid affidavits have been filed vide Diary Nos.0236/1, 0236/2 and 02326/3 all dated 01.12.2022.

8. In response to the abovementioned notices, the statutory authorities have furnished their responses.

8.1 Registrar of Companies (RoC)/Regional Director (RD)

8.1.1 The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No02326/9 dated 09.12.2022. It is stated in Para 10 of the report of the Regional Director, that RoC, Delhi sets out certain observations based on Clause 33 of its report stating that petitioner companies have not attached separate schedule of statements of assets and liabilities of two demerged undertaking. It is also stated that the demerged company has not paid

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the statutory dues on account of the dispute which is pending before respective authority. The Resulting Company No.2 has not filed the annual return for F.Y. 2021-2022. It is mentioned by RoC that as per the comments of auditors of Resulting Company No.1, certain uncertainties may differ from the estimates on company’s operation due to the Covid-19 pandemic.

8.1.2 The petitioner companies have replied by letter 02.12.2022 to RoC (attached as Annexure-C of RD report) wherein it has been stated that the scheme clearly defines ‘Care Business Undertaking’ which is to be transferred to Resulting Company 1 and ‘Demerged Identified Business’ which is to be transferred to Resulting Company No. 2. The schedule 1 to the scheme clearly specify the assets to be transferred to Resulting Company No.2. It is further clarified that the demerged company has not paid the statutory dues as litigation is pending under direct and indirect tax legislations and clause 8 of Part B of the scheme has the enabling clause for treatment of taxes. Additionally, the board of the company has approved its annual audited financial statements in its meeting held on 26.09.2022 and submitted the signed financials as Annexure E3 of the reply. It is stated that Statutory Auditors of Resulting Company No. 1 has removed the statement as no such rish was foreseen due to the pandemic at time of reporting of F.Y. 2021-22.

8.1.3 Thus, the issues raised in the Regional Director’s Report have been adequately addressed by the petitioners.

8.2 Income Tax Department

8.2.1 The Income Tax Department filed its report by Diary No.02326/7 dated 06.12.2022 and Diary No.02326/8 dated 09.12.2022 stating that there are certain demands outstanding in respect of the Petitioner Companies No.1 and 2 and the Income Tax Department has no objection to the proposed Scheme of Arrangement.

8.2.2 Thus, no adverse observation can be inferred from the report of Income Tax Department.

9. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexures-P5, P9 and P13 of the petition.

10. We have heard the learned counsel for petitioner companies and learned counsel for the Income Tax Department and have perused the record carefully.

11. In the context of the above discussion, the Scheme contemplated between the petitioner companies appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by

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the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Arrangement attached as Annexure P-1 with the petition.

12. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

13. While approving the scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

i. That all the properties, rights and powers of the Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2 be transferred, without further act or deed, to the Resulting Company No. 1 and 2, respectively. Accordingly, the same shall pursuant to Sections 230 & 232 of the Act, be transferred to and vested in the Resulting Company No. 1 and 2 for all the estate and interest of the Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2 but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2 be transferred, without further act or deed, to the Resulting Company No. 1&2 and accordingly the same shall pursuant to Sections 230 to 232 of the Act, be transferred to and become the liabilities and duties of the Resulting Company No.1 & 2;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2 are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Resulting Company No.1 and 2 as if the Resulting Company No. 1 and 2 was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts agreements, sanctions and permission of Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the

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Demerged Company No. 2 which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Resulting Company No. 1 & 2 and be in full force and effect in favour of the Resulting Company No. 1 & 2 and may be enforced by or against it as fully and effectually as if, instead of Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2 , the Resulting Company No. 1 & 2 had been a party or beneficiary or obliged thereto;

v. All the employees of the Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2 shall be deemed to have become the employees and the staff of the Resulting Company No. 1 & 2 with effect from the Appointed Date, and shall stand transferred to the Resulting Company No. 1 & 2 without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

vi. That the Appointed Date for the Scheme shall be the opening of business hours on 01.01.2022 as specified in the Scheme of Arrangement;

vii. That the legal proceedings or litigations if any, now pending by or against the Care Business of the Demerged Company No. 1 and Demerged Identified Business Undertaking of the Demerged Company No. 2 be continued by or against the Resulting Company No. 1 & 2 respectively as per the scheme;

viii. That as per the Scheme of Arrangement, the Resulting Company No. 2 shall without further application, shall allot shares of Resulting Company No. 2 to the shareholders of the Demerged Company No. 2;

ix. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;

x. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration; and

xi. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

14. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

15. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

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16. The Company Petition CP (CAA) No.70/Chd/Hry/2022 is allowed and disposed of accordingly.

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