(2020) 12 NCLT CK 0146

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 983, 1029 Of 2020

Bindu Investment Company Private Limited And Ors. Vs

Date of Decision : 10-12-2020

Acts Referred:
Companies Act, 2013 — Section 13, 14, 61, 64, 230, 230(1), 230(3), 230(4), 230(5), 230(6), 231, 232, 232(3)(i), 232(6)

Citation : (2020) 12 NCLT CK 0146

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Shruti Kelji-Pednekar

Judgement

,,,

1. The Bench is convened by videoconference today (10.12.2020).,,,

2. Heard the Learned Counsel for Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme of Merger by Absorption,,,

and nor has any party controverted any averments made in the Petition to the Scheme of Merger by Absorption between Bindu Investment Company,,,

Private Limited (Transferor Company No. 1) and Harit Investment Company Private Limited (Transferor Company No. 2) and Gokulesh Investment,,,

Company Private Limited (Transferor Company No. 3) and Haren Trading Private Limited (Transferor Company No. 4) and Krishnakumar Trading,,,

Private Limited (Transferor Company No. 5) with Haren Textiles Private Limited (Transferee Company) and their respective shareholders.,,,

3. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, to the Scheme of",,,

Merger by Absorption between Bindu Investment Company Private Limited (Transferor Company No. 1) and Harit Investment Company Private,,, Limited (Transferor Company No. 2) and Gokulesh Investment Company Private Limited (Transferor Company No. 3) and Haren Trading Private,,,

Limited (Transferor Company No. 4) and Krishnakumar Trading Private Limited (Transferor Company No. 5) with Haren Textiles Private Limited,,,

(Transferee Company) and their respective shareholders.,,,

4. Each of the Petitioner Companies have approved the Scheme by passing a Board Resolution at their respective meeting held on 16th March, 2020.",,,

5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Appointed Date of the Scheme is 1st January, 2020.",,,

6. The Petitioner Companies submits that the First, Second and Third Petitioner Companies was mainly incorporated to carry out the business as",,,

investors in securities, jewellery, landed property, to undertake and carry on, and execute all kinds of financial operations and other related business.",,,

The Fourth Petitioner Company was mainly incorporated to carry out the business of Traders, crimpers, printers, knitters, packers and balers of silk,",,,

synthetics, viscose, art silk, cotton, jute, hemp, wool and any other fibrous material and the cultivation thereof and the business of weaving, selling and",,,

dealing in fibrous materials, yarn, cloth, lines and other related business. The Fifth Petitioner Company was mainly incorporated to carry out the the",,,

business of Traders, twisters, crimpers, printers, ginners, pressers, knitters, packers and balers of silk, synthetics, viscose, art silk, cotton, jute, hemp,",,,

wool and any other fibrous material and the cultivation thereof and the business of weaving, selling and dealing in fibrous materials, yarn, cloth, lines",,,

and other related business. The Sixth Petitioner Company is inter-alia engaged in textile (fabric manufacturer) and real estate business.,,,

7. The Learned Advocate for the Petitioner Companies states that the proposed Merger by Absorption would simplify corporate structure of Haren,,,

Group entities and will enable to consolidate certain Haren Group entities and thereby save cost through focused operational efforts, rationalization,",,,

standardization and simplification of business process and integration and optimization of various support functions, resources and the assets. The",,,

proposed Merger by Absorption will enable easier and speedier decision making at all levels and better management and co- ordination and will result,,,

in avoiding duplication of administrative functions, reduction of multiplicity of legal and regulatory compliances. It will also facilitate inter-transfer of",,, resources and costs and optimum utilization of assets and brand names of the Transferee Company and Transferor Companies and bring uniformity in,,,

corporate policy. The present scheme is commercially and economically viable and feasible and is fair and reasonable. The Scheme will be in the,,,

beneficial interest of all the stakeholders and shareholders of all the Transferor Companies and Transferee Company.,,,

8. The Learned Advocate for the Petitioner Companies states that the swap ratio as per Clause No. 12 of the Scheme is as under:,,,

The Transferee Company, without further application, act or deed, shall issue and allot to each of the equity shareholders of Transferor Companies",,,

and whose name appears in the Register of members of Transferor Companies on the Record Date, shares in the proportion as follows:",,,

i. To the Equity Shareholders of the Transferor Company No.1:,,,

Since all the Equity Shares of Transferor Company No. 1 are held inter-se between the companies under the Scheme, all the said Equity Shares will",,,

be cancelled and no shares of Transferee Company are required to be issued.,,,

ii. To the Equity Shareholders of the Transferor Company No. 2:,,,

Since all the Equity Shares of Transferor Company No. 2 are held inter-se between the companies under the Scheme, all the said Equity Shares will",,,

be cancelled and no shares of Transferee Company are required to be issued.,,,

iii. To the Equity Shareholders of the Transferor Company No. 3 :,,,

Since all the Equity Shares of Transferor Company No. 3 are held inter-se between the companies under the Scheme, all the said Equity Shares will",,,

be cancelled and no shares of Transferee Company are required to be issued.,,,

iv. To the Equity Shareholders of the Transferor Company No. 4 :,,,

To the extent, the Equity Shares of Transferor Company No. 4 are held inter-se between the companies under the Scheme, all the said Equity Shares",,,

will be cancelled and no shares of Transferee Company are required to be issued to said company shareholders.,,,

2 Equity Shares of Transferee Company of Rs. 100/- each for every 3 Equity Shares of Rs.10/- each held by remaining Shareholders in Transferor,,,

Company No. 4.,,,

v. To the Equity Shareholders of the Transferor Company No. 5 :,,,

To the extent, the Equity Shares of Transferor Company No. 5 are held inter-se between the companies under the Scheme, all the said Equity Shares",,,

will be cancelled and no shares of Transferee Company are required to be issued to said company shareholders.,,,

2 Equity Shares of Transferee Company of Rs. 100/- each for every 3 Equity Shares of Rs.10/- each held by remaining Shareholders in Transferor,,,

Company No.5.,,,

9. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petition is filed in consonance with the Order dated 1st,,,

May, 2020 passed in consolidated Company Scheme Application No.983 of 2020 of the National Company Law Tribunal, Mumbai Bench.",,,

10. The Learned Advocate appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all,,,

requirements as per directions of this Bench, that they have filed necessary compliance reports.",,,

11. The Regional Director has filed a Report dated 25th November, 2020 stating therein :-",,,

IV. The observations of the Regional Director on the proposed Scheme to be considered by the Honâ??ble NCLT are as under:,,,

(a) In addition to compliance of AS-14 (IND AS-103), the Transferee Company shall pass such accounting entries which are necessary in connection",,,

with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,,,

(b) As per Part-I-Definition Clause 1(1.2, 1.4 & 1.8) of the Scheme,",,,

â??Appointed Dateâ?? for the purpose of this Scheme means 1st January, 2020.",,,

â??Effective Dateâ?? means the date on which the Scheme shall be deemed to be effective from Appointed Date;,,,

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an",,,

appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the,,,

appointed date. However, this aspect may be decided by the Honâ??ble Tribunal taking into account its inherent powers.",,,

Further, the petitioner may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by",,, the Ministry of Corporate Affairs.,,,

(c) The Honâ??ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per,,,

Section 230 (6) of the Act in the meetings duly held in terms of section 230 (1) read with subsection (3) to (5) of section 230 of the Act and the,,,

Minutes thereof are duly placed before the Tribunal.,,,

(d) Honâ??ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application &,,,

Company Petition, are one and same and there is no discrepancy/any changes/ changes are made, for changes if any, liberty to be given to Central",,,

Government to file further report if any required;,,,

(e) The Petitioner 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 Amalgamation. Further, the approval of the Scheme by this Honâ??ble Tribunal may not deter such authorities to deal with any of this",,,

issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s),,,

(f) Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 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",,,

authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.",,,

(g) As regards Part â?" IV Clause 13 (13.1 to 13.3) of the Scheme (Clubbing of Authorised Share Capital); Upon the Scheme coming into effect, the",,,

existing authorized share capital of the Transferor Companies shall stand combined with the authorized share capital of the Transferee Company. In,,,

this regard it is submitted that Honâ??ble Tribunal may kindly direct the petitioner to comply with provisions of Section 13, Section 14, Section 61",,,

&Section 64 of Companies Act, 2013 or any other applicable provision of the Act,",,,

(h) In view of the observation raised by the ROC Mumbai, mentioned at para 18 above Honâ??ble NCLT may pass appropriate orders / orders as",,,

deem fit;,,,

18. Observation of the ROC, Mumbai is as under :",,,

ROC Mumbai in their report in Para No. 16 stated that Notices to be issued to the RBI by the Transferor Company No. 1, 2 and 3 respectively.",,,

(i) Transferor Company at Sr. No. 1, 2 and 3 are Investment Companies and hence the Petitioner Companies be directed to place on record whether",,,

the NOC from RBI is required to be obtained or not and whether RBI has been issued any notice, if so details of the same be placed on record.",,,

12. As far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies undertakes, through",,,

their counsel, that the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with",,,

other applicable Accounting Standards such as AS-5 (IND AS-8), etc.",,,

13. As far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies state that the",,,

Appointed Date is 1st January, 2020 and the Scheme will be effective from the said Appointed Date. Further, the Petitioner Companies undertakes",,,

through their counsel 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.,,,

14. As far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies states that pursuant",,,

to the Order dated 1st May, 2020 passed in Company Scheme Application No. CA (CAA) No.983/MB.V/2020 and as directed therein, the meeting of",,,

the Equity Shareholders of all the Petitioner Companies has been dispensed with in view of the Consent Affidavits given by all the Equity Shareholders,,,

of the respective Petitioner Companies annexed as Annexures â??I-1 to I-5â?, â??J-1 to J-4â?, â??K-1 to K-4â?, â??L-1 to L-5â?, â??M-1 to M-",,,

5â?? and â??N-1 to N- 11â?? to the Company Scheme Application.,,,

Further, the meeting of Secured Creditors of the First to Fifth Petitioner Companies was not required to be held as there was no Secured Creditor in",,,

the said Companies. Also there are no Unsecured Creditors in the Second Petitioner Company, therefore, its meeting was also not required. The",,,

meeting of Unsecured Creditors of the First, Third, Fourth, Fifth and Sixth Petitioner Companies and meeting of Secured Creditors of the Sixth",,,

Petitioner Company was dispensed with in view of the positive net worth of all the Petitioner Companies as well as the said Creditors will also not be,,, affected by the present Scheme. None of the Petitioner Companies are in receipt of any objection by any of the Creditors till date. The Petitioner,,,

Companies again undertakes that the interest of all the Creditors shall be protected. Hence, the meeting of members and creditors as per Section 230",,,

(6) of the Act in terms of Section 230 (1) read with subsection (3) to (5) has been dispensed vide order dated 1st May, 2020 passed in Company",,,

Scheme Application No.983 of 2020.,,,

15. As far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies undertakes through",,,

Sr.

No.","Name of the Petitioner

Company","Whether the Petitioner

Company is an

Investment Company",Reason / Rationale for same

1.,"Bindu Investment

Company Private Limited

(BICPL/ Petiti oner

Company No. 1)","No. The Petitioner

Company No. 1, 2 and 3

(collectively referred to

as â??the

Companiesâ??) are not

an Investment

Companies","â?¢ The Companies are not carrying any lending or

financing business.

â?¢ The Companies are not carrying any business of

acquisition / trading in shares and securities.

â?¢ The Companies are holding only investments/loans

within group companies of Haren Group which are

strategic and long term investments.

â?¢ The Companies does not have any regular financial income.

â?¢ The Companies have earned revenue by

commission and brokerage for sale of textiles and

interest/dividend from its Group entities.

â?¢

2.,"Harit Investment Company

Private Limited (HICPL/

Petitioner Company No. 2)",,

3.,"Gokulesh Investment

Company Private Limited

(GICPL/ Petitioner

Company No. 3)",,

28. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.,,,

29. Ordered accordingly. Pronounced in open Court today. File be consigned to the record.,,,