(2023) 10 NCLT CK 0089

In the National Company Law Tribunal

Case No : CP (CAA)No.15/ALD/2022

Blooming Jewellery Private Limited Vs

Date of Decision : 26-10-2023

Acts Referred:

Companies Act, 2013 — Section 133,210, 211, 212, 213, 214, 215, 216, 217, 218 226, 230, 230(7), 232, 232(3)

Citation : (2023) 10 NCLT CK 0089

Hon'ble Judges : Praveen Gupta, Member (J);Ashish Verma, Member (T)

Bench : Division Bench

Advocate : Kartikeya Goel, Krishna Dev Vyas, Niraj Kumar Singh, Gaurav Mahajan, Rajneesh Kumar Singh

Final Decision : Disposed Of

Judgement

1. The present Joint Company Petition is filed by the Petitioner Companies above named under Sections 230 & 232 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions, if any, for sanction of the Scheme of Amalgamation of Blooming Jewellery Private Limited ("Petitioner Company No. 1" or "Transferor Company"), and Lalji Sarraf Private Limited ("Petitioner Company No. 2" or "Transferee Company") ("Scheme" or "Scheme of Amalgamation").

2. The Petition has now come up for final hearing. The Ld. Counsel for the Petitioner Companies submits as follows:

(i) The proposed 'Scheme of Amalgamation' has previously been approved by the Board of Directors of Petitioner Companies in their respective Board Meetings held on 18th April, 2022.

(ii) The factual position of the Authorized, Issued, Subscribed and Paid-up Share Capital of the Petitioner Companies as on 31st March, 2021 is described in the present Company Petition.

(iii) The rationale of the proposed Scheme of Amalgamation is elaborately described in the present Company Petition which may be summarized as under:

(i) The Transferor Company and the Transferee Company are closely held private limited Group Companies under common management and control. Both the Companies are engaged in similar business activities. The proposed amalgamation of the Transferor Company with the Transferee Company would result in consolidation of both these Companies and pooling of their resources into a single entity.

(ii) The proposed Amalgamation would result in optimizing and leveraging existing resources of these Companies for the most beneficial utilization of these factors in the combined entity. It would be advantageous to combine the activities and operations of these Companies in a single entity and building strong capability to effectively meet future challenges in competitive business environment.

(iii) The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.

(iv) The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferor Companies and the Transferee Company.

(v) The proposed amalgamation will provide greater efficiency in fund management and unfettered access to fund flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.

(vi) The proposed Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

3. The Petitioners have stated that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 as certified by the respective Auditors of the Petitioner Companies.

4. It has also been stated in the Petition that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013 are pending against any of the Petitioner Companies.

5. It has also been stated in the Petition that the Scheme is not prejudicial to the interest of the Shareholders and Creditors of the Petitioner Companies and the Petition is made bona fide and is in the interest of both the Petitioner Companies and their respective Shareholders and Creditors as a whole and is just and

equitable.

6. It has been stated that the Transferor Company and the Transferee Company are private limited closely held Group Companies under the common management and control.

7. It is also submitted that valuation exercise has been carried out to determine the share swap ratio for the proposed Scheme of Amalgamation. Mr Sandeep Kumar Agrawal, a Chartered Accountant and the Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI), has prepared the Report on Valuation of Shares and Share Exchange Ratio. The following Share Exchange Ratio has been proposed for the proposed Scheme of Amalgamation:

§ The Transferee Company will issue 33 (thirty-three) Equity Shares of ☐ 10 each, credited as fully paid-up, to the Shareholders of the Transferor Company for every 1,000 (one thousand) Equity Shares of ☐ 10 each held in the Transferor Company-Blooming Jewellery Pvt. Ltd.

Any fraction of share arising out of the aforesaid share exchange process, if any, will be rounded off to the nearest whole number.

8. The Petitioner Companies have annexed the Share Valuation Report dated 16th April, 2022 given by Mr Sandeep Kumar Agrawal, a Chartered Accountant and the Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India in relation to the share exchange ratio.

9. A perusal of the present Petition discloses that initially the Petitioner Companies had filed a Company Application No. 12/ALD/2022 seeking directions of this Tribunal to dispense with the requirement of convening the meetings of the Equity Shareholders and Unsecured Creditors of the Transferor Company and the Transferee Company, for the purpose of considering and approving the Scheme of Amalgamation. None of the Petitioner Companies has any Secured Creditor. Accordingly, this Tribunal vide its order dated 1st August, 2022 (date of pronouncement), allowed the above mentioned prayers, by dispensing with the requirement of convening the meetings of the Equity Shareholders and Un-secured Creditors of the Transferor Company and the Transferee Company, for the purpose of considering and approving the Scheme of Amalgamation. None of the Petitioner Companies has any Secured Creditor.

10. This Tribunal vide its order dated 16th August, 2022 directed to issue notice of the Company Application/Scheme of Amalgamation to the Statutory Authorities, viz., (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur; (c) The Official Liquidator, Uttar Pradesh, Allahabad; (d) the Income Tax Department.

11. This Tribunal further directed to issue notice of hearing in respect of present

Company Petition to the Statutory Authorities and also to make paper publication in this respect in "Business Standard" (English, Lucknow Edition) and "Business Standard" (Hindi, Lucknow Edition).

12. In compliance thereof, the Petitioner Companies have filed Affidavit of service and publication, confirming that notices have been duly published in "Business Standard" (English, Lucknow Edition) and "Business Standard" (Hindi, Lucknow Edition) on 14th September, 2022. The Petitioner Companies have also served notice of the Company Petition to (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur; (c) The Official Liquidator, Uttar Pradesh, Allahabad; (d) the Income Tax Department.

13. In response to the above stated notice, the Registrar of Companies, Ministry of Corporate Affairs, Kanpur, Uttar Pradesh has submitted its Report dated 29th September, 2022. No objection has been raised by the Registrar of Companies on the Scheme of Amalgamation.

14. In response to the above stated notice, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi has submitted its Report dated 10th February, 2023. No objection has been raised by the Regional Director on the Scheme of Amalgamation.

15. In response to the above stated notice, the Official Liquidator, Ministry of Corporate Affairs, Allahabad, Uttar Pradesh has also submitted his Report dated 9th December, 2022 wherein it has been stated that the Official Liquidator has no objection to the dissolution of the Petitioner Transferor Company without winding up pursuant to provisions of Sections 230 and 232 of the Companies Act, 2013 and other applicable sections and rules thereunder.

16. In response to the notices served, the Income Tax Department has furnished its Report dated 9th May, 2023 and 23rd November, 2022, in respect of the Petitioner Transferor Company and the Transferee Company, respectively. The Income Tax Department has given its 'No-objection' to the proposed Scheme of Amalgamation.

The Petitioner Companies have filed Affidavits vide diary no. 090109005442022/3 dated 13.02.2023, wherein the Petitioner Companies have undertaken to pay any demand that may be raised by the Income Tax Department or any other competent authority in terms of the applicable provisions of law subsequent to the sanction of the Scheme by this Tribunal. Learned Counsel of the Petitioner Companies have submitted that the Transferor Company as well as the Transferee Company are profit-making companies with substantial net worth. Hence, interest of the Income Tax Department will be duly protected even after the approval of the Scheme of Amalgamation.

17. The Petitioner Companies have also filed Affidavits vide Diary No.

0902109005442022/2 dated 28th October, 2022, confirming that neither the Petitioner Companies nor their Legal Counsel has received any objection/ representation from any person against the Petition or the proposed Scheme of Amalgamation in response to the publication of the notice of hearing of the present Petition in Newspapers.

18. We have gone through the reports/comments of the Ld. Registrar of Companies, Uttar Pradesh, Kanpur, Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Ld. Official Liquidator, Ministry of Corporate Affairs, Allahabad and the Income Tax Department and after perusing the same, we find that there appears to be no reservation to grant sanction to the Scheme and we are of the view that the sanction of the present Scheme is not against public policy, nor it would be prejudicial to the public interest at large.

19. In addition to above, all the statutory compliance seems to have been complied with by the Petitioner Companies, therefore, the present Company Petition deserves to be allowed in terms of its Prayer Clause.

20. As a result, the proposed Scheme of Amalgamation, which is annexed to the Company Petition stands approved and sanctioned and the same shall be binding on all the Shareholders and Creditors of the above-named Petitioner Companies and also on the Petitioner Companies with effect from the Appointed Date, i.e., 1st day of April, 2022. The Petitioner Companies are required to act upon as per terms and conditions of the sanctioned Scheme of Amalgamation.

21. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any, is applicable), taxes (including Income Tax, GST or any other charges, if any, are applicable) 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.

22. THIS TRIBUNAL DO FURTHER ORDER:

i. Upon the Scheme becoming effective, all the property, rights and powers of the Transferor Company specified in the first, second and third parts of the Schedule hereto and all other 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 Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

ii. Upon the Scheme becoming effective, 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 Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

iii. Upon the Scheme becoming effective, all the employees of the Transferor Company, in service on the Effective Date, shall be transferred to and shall become the employees of the Transferee Company as provided in the Scheme of Amalgamation; and

iv. Upon the Scheme becoming effective, all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and

v. Upon the Scheme finally coming into effect and in consideration of the transfer and vesting of all the said assets and liabilities of the Transferor Company to the Transferee Company in terms of the Scheme, the Transferee Company shall, without any further application or deed, issue and allot Share(s) to the Shareholders of the Transferor Company in the following manner as provided in the Scheme of Amalgamation:

§ The Transferee Company will issue 33 (thirty-three) Equity Shares of ☐ 10 each, credited as fully paid-up, to the Shareholders of the Transferor Company for every 1,000 (one thousand) Equity Shares of ☐ 10 each held in the Transferor Company-Blooming Jewellery Pvt. Ltd.

23. Liberty is granted to the Petitioners to file the Schedule of Assets.

24. The 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 Registrar of Companies, Kanpur, for registration; and on such certified copy being so delivered, the Transferor Company shall stand dissolved without undergoing the process of winding up and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said two Companies shall be consolidated accordingly

25. The Petitioner Companies shall supply legible print outs of the Scheme and the Schedule of Assets in acceptable form to the Registry and the Registry will append such print outs, after verification, to the certified copy of the Order.

26. Certified copy of this Order be supplied, if applied for, subject to compliance with usual formalities.

27. That the Resulting Company shall deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) in favour of “The Ministry of Corporate Affairs” within a period of four weeks from the date of receipt of the certified copy of this order and file affidavit of compliance thereof.

28. All the concerned Regulatory Authorities and other persons to act on a copy of this Order annexed with the Scheme duly authenticated by the Registrar, National Company Law Tribunal, Allahabad Bench.

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

30. Accordingly, the present Company Petition bearing CP (CAA) No. 15/ALD of 2022 is allowed and stands disposed of.

