(2022) 12 NCLT CK 0004

In the National Company Law Tribunal

Case No : CA (CAA) No. 57/Chd/Chd/2022 (First Motion)

Canam Consultants Limited Vs

Date of Decision : 01-12-2022

Acts Referred:
Companies Act, 2013 — Section 66, 133, 230, 230(2)(c), 232

Citation : (2022) 12 NCLT CK 0004

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

Bench : Division Bench

Advocate : Rohit Khanna

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint first motion application filed by Applicant Companies namely; Canan Consultants Limited (Demerged Company/Applicant Company No. 1) and Xplent Logistics Park Private Ltd. (Resulting Company/Applicant Company No. 2) under Sections 230-232 and Section 66 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 is attached as Annexure-A1 of the Application.

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

3. The Applicant Company No. 1 is presently engaged in the business of immigration consulting, overseas education and career consulting. The company is also engaged in the business of warehousing, warehouse fixture leasing, buying, selling and construction of warehouses.

4. The Applicant Company No. 2 is presently engaged in the business of warehousing, warehouse fixture leasing, buying, selling and construction of

warehouses. The Applicant Company No.1 and its nominees hold 100% of the paid-up share capital of the Applicant Company No.2

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

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

a. The Demerged Business and remaining business of the Demerged Company have been nurtured and developed from a nascent stage and currently are at different stages of maturity, with different capital and operating requirements including risk and competition necessitating different management approaches and focus.

b. The Demerged company’s Demerged Undertaking shall be integrated and consolidated with business carried out by the Resulting Company resulting in strengthening of the business, synergistic benefits, economies of scale, faster decision making, integration of supply chain, reduction in operating costs, strengthening the focus, enhancing the ability to deal with regulatory challenges, long-term growth, increasing profitability, higher market share, better customer service, increased ability to face the competitive regulatory environment, risks and service, increased ability to face the competitive regulatory environment, risks and policies and consolidating the financial management and operational resources which shall boost the business prospects of the demerged company and the resulting company and provide for value unlocking/wealth creation of the investors in the long-run.

c. The Demerged company is building and strengthening the product portfolio of the remaining business. However, to grow the remaining business and further explore the opportunities available, the demerged company needs to give focused management time and operation attention to its remaining undertaking since it has significantly different risk reward profile. The proposed arrangement shall enable the demerged company to hive off its demerged undertaking to the resulting company and manage the remaining undertaking more effectively.

d. Segregating the business would enable independent business opportunities, attracting different sets of investors, strategic partners, lenders and other stakeholders and would bring about synergy of operations and greater internal control on business processes/ease in decision making.

e. The demerger of the demerged undertaking from the demerged company to the resulting company within the Group, apart from enabling the demerged company and the resulting company to respectively better focus, strategize and grow the respective businesses, will also help retain and increase the competitive strength of the group thereby directly and indirectly strengthening the reputation, goodwill, customer service, customer recall, distribution network, overall economies of scale for the respective businesses of the demerged company and the resulting company.

f. The proposed arrangement shall provide for a focused strategy in operations of both the businesses with faster decision making, economy of scale which would be in the best interests of the both the companies and their respective shareholders and other stakeholders.

g. The Boards of the demerged company as well as the resulting company believe that this demerger will contribute to smooth integration of relevant undertakings of both the companies and would benefit the shareholders, employees and other stakeholders of the demerged company and the resulting Company. The scheme is expected to contribute in furthering and fulfilling the objects of both the companies and in the growth and development of their respective business.

h. Pursuant to the Scheme, all the equity shareholders of the demerged company as on the Record Date will receive equity shares in the resulting company and subsequently, such shareholders of the demerged company will hold equity shares in both the demerged company and resulting company. It will give such shareholders of the demerged company the ability to continue to remain invested in both or either of the companies, giving them greater flexibility in managing and/or dealing with their investments.

i. The transfer of the demerged undertaking shall be on an ongoing basis.

7. It is stated that the Board of Directors of the Applicant Companies in their meetings held on 17.06.2022 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 part of Annexure-A2 and Annexure-B1 respectively of the application.

8. The appointed date of the Scheme is 01.07.2022 as mentioned in the Part I Para 1.2 of Scheme of Arrangement which is attached as Annexure A-1 of the application.

9. It is stated that the Applicant Companies have filed the audited financial statements as on 31.03.2021 and provisional Financial Statements as on 28.02.2022 attached as Annexure-A4 and Annexure-B3 respectively of the application.

10. It is submitted that the Applicant Company No.1 has filed a certificate, dated 10.07.2022 issued by R.P. Mallick and Associates, Chartered Accountants of Applicant Company No.1 and Applicant Company No.2 has filed a certificate, dated 08.07.2022 issued by R.P. Mallick and Associates, Chartered Accountants of Applicant Company No.2 certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure-C2 of application.

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

Vikas Aggarwal Registered Valuer having IBBI registration No.-IBBI/ RV/02/2018/10046 which is attached as Annexure-4 of the application. As per valuation report dated 15.06.2022, the following Fair Exchange Ratio has been proposed:-

"1 (one) equity share of Xplent Logistics Park Private Ltd. of face value of INR 10/- each fully paid up shall be issued for every 10 (Ten) equity shares of INR 10/- each fully paid up held in Canam Consultants Limited"

12. It is submitted that the Scheme [Annexure -A1 of the application] also takes care of the interests of the workmen and staff (employees) of the Companies, by virtue of Part II, Para 8 of the Scheme.

13. It is deposed by way of affidavit that the notice for sanctioning of Scheme of Arrangement to be send to following statutory authorities:-(1) The Central Government, through Regional Director (2) The Registrar of Companies (3) Jurisdictional Income Tax Authorities. Apart from the above mentioned sectoral regulators/statutory authorities, no other sectoral regulators/statutory authorities are applicable to the applicant companies. The applicant companies are not covered under the provisions of the Competition Commission of India Act, 2006 and no provision of the Competition Act, 2006 is triggered by way of the Scheme of Arrangement. (Annexure C3 and C4 respectively of the application).

14. It is deposed by way of affidavit that Scheme of Arrangement is not the Scheme of corporate debt restructuring and hence, requirements of Section 230(2)(c) of the Companies Act, 2013 are not applicable. However, the scheme includes reduction/cancellation of share capital of the applicant companies (Annexure C5 and C6 respectively of the application). It is further deposed that no investigation or proceedings under the Companies Act, 2013, the Insolvency and Bankruptcy Code, 2016 have been instituted or are pending in relation to the applicant companies. No litigation having any material or adverse impact on the scheme of Amalgamation or Arrangement is pending against the applicant companies before any Court (Annexure -C7 of the application)

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

i. Proposed Scheme of Arrangement (Annexure-A1 of the application)

ii. Copy of Memorandum and Articles of Association of the applicant companies (Annexures-A3 and B2 respectively of the application).

iii. List of Equity Shareholders of the applicant companies as on 30.06.2022 alongwith the consent obtained on affidavits (Annexures-A5, and B4 respectively of the application).

iv. List of Secured Creditors of the applicant company No.1 duly certified by the R.P. Mallick and Associates, Chartered Accountants as on 30.06.2022 along with their consent affidavits (Annexure-A6 of the application).

v. List of Secured Creditor of the applicant company No.2 duly certified by the R.P. Mallick and Associates, Chartered Accountants as on 30.06.2022 (Annexure-B5 of the application).

vi. List of Unsecured Creditors of the applicant companies duly certified by the R.P. Mallick and Associates, Chartered Accountants as on 30.06.2022 (Annexures-A7, B6 respectively of the application).

vii. Certificates of Chartered Accountants dated 10.07.2022 and 08.07.2022 to the effect that Accounting treatment proposed in the Scheme is inconformity with Section 133 of Companies Act, 2013 (Annexure-C2 of the application).

viii. Share Entitlement Report (Annexure- C1 of the application).

ix. Audited financial statements as on 31.03.2021 and provisional Financial Statements as on 28.02.2022 of the applicant companies are attached as Annexure-A4 and Annexure-B3 respectively of the application.

x. Affidavit with regard to the Sectoral Regulator (Annexure C3 and C4 respectively of the application).

16. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors is as follow:

Name of the Applicant

Companies

Shareholders along with their consent

Creditors along with their consent.

Equity Shareholder

Consent with calculations

Secured Creditors

Consent of Secured Creditors with calculations

Unsecured Creditors

Consent with calculations

Applicant Company No.1

7

100%

in value

3

97.51%

(in value)

85

13

94.15% (in value)

Applicant Company No.2

2

100%

in value

NIL

NA

3

1

99.39%

17. 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 meetings of the Equity Shareholders of Demerged Company/Applicant Company No.1 are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent have been received by way of affidavits.

b) The meetings of Secured Creditors are dispensed with as consent of secured creditors holding 97.51% (in value) have been received by way of affidavits.

c) The meetings of Unsecured Creditors are dispensed with as consent of unsecured creditors holding 94.15% (in value) have been received by way of affidavits.

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

a) The meetings of both Equity Shareholders of Resulting Company/Applicant Company No.2 are 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 is no Secured Creditor in the Resulting Company/Applicant Company No.2, therefore there is no scope for any meeting.

c) The meetings of Unsecured Creditors are dispensed with as consent of sole unsecured creditor holding 99.39% (in value) has been received by way of affidavits.

18. 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, (c) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition. The applicant companies shall also file the latest financial statements as on 30.06.2022 or as on a subsequent date while filing the second motion petition.

