(2023) 06 NCLT CK 0021

In the National Company Law Tribunal

Case No : CP (CAA) No. 40/Chd/Hry/2022

Chanda Enterprises Private Limited Vs

Date of Decision : 08-06-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232
Income Tax Act, 1961 — Section 170(2A)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 15

Citation : (2023) 06 NCLT CK 0021

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

Bench : Division Bench

Advocate : Suman Kumar Jha, S. Shiva

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint second motion petition filed by Petitioner Companies namely; Chanda Enterprises Private Limited (Demerged Company) and Chanda Manufacturing Private Limited (Resulting Company) under Section 230-232 Companies Act, 2013 (the Act) and Rule 15 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement between the Petitioner Companies.

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

3. The Petitioner Companies have filed the first motion application bearing CA (CAA) No.9/Chd/Hry/2022 before this Tribunal for seeking directions for dispensing with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Companies. The first motion application was disposed of by order dated 19.05.2022, and the meetings of Equity Shareholders, Secured and Unsecured Creditors of Petitioner Companies were dispensed with for the reasons mentioned in the aforesaid order.

4. The main objectives, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the order dated 19.05.2022.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 07.07.2022 and the same were compiled by filing affidavits by Diary No. 01189/1 dated 23.09.2022. The notice of hearing was published in "Financial Express" (English) Haryana Edition and "Jansatta" (Hindi) Haryana Edition on 20.09.2022. 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 (a) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi and Haryana and (c) Jurisdictional Income Tax Department through the Nodal Officer by mentioning the PAN of the Company by way of speed post. Original postal receipts evidencing service of notices are attached as Annexure – 1 of the aforesaid affidavit.

6. It is deposed by the directors of the petitioner companies that the petitioner companies have not received any complaint/objection against the proposed Scheme of Arrangement for Demerger from any person/party/stakeholder interested in the Scheme in any manner. The aforesaid affidavit has been filed by Diary No. 01189/1 dated 23.09.2022.

7. On 30.09.2022, this Tribunal directed the authorities to submit their report with a copy in advance to the counsel opposite and the matter was listed on 02.11.2022. On 02.11.2022, it was observed that no report was received from the authorities to whom the notices were issued, and, one further opportunity was given to the authorities. It was further directed to the Petitioner Companies to serve a copy of the order to the Government Authorities through email. In compliance of the order dated 02.11.2022, the Petitioner Companies has filed compliance affidavit by Diary No. 01189/2 dated 21.12.2022 wherein the copy of emails served to the Regional Director, (Northern Region), Registrar of Companies, NCT of Delhi & Haryana and Income Tax Department has been attached as Annexure-1 of the aforesaid compliance affidavit.

8. When the matter was taken up for hearing on 14.12.2022 and 16.02.2023, it was again noted that no reply has been received from any authorities and the Petitioner Companies were again directed to email a copy of the order dated 14.12.2022 to the concerned authorities. In compliance of the order of this Tribunal dated 14.12.2022 and 16.02.2023, the Petitioner Companies have filed a compliance affidavit by Diary No. 01189/3 dated 10.01.2023 and 01189/4 dated 03.03.2023 showing the service of emails sent to Statutory Authorities, which are attached as Annexure-1 of the aforesaid affidavits.

9. It is observed that no statutory authorities have filed their report till date despite serving the notices and emails several times as mentioned in the paragraphs above. In view of the repeated notices sent to the authorities, it was

presumed that the aforesaid statutory authorities i.e. the Regional Director (Northern Region), Registrar of Companies (NCT of Delhi & Haryana) and the Income Tax Department (through the Nodal Officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh, have no objections with regard to the present Scheme of Arrangement.

10. 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 Accounting Standards as specified in Section 133 of the Act, and other Generally Accepted Accounting Principles was attached as Annexure – P/9 of the petition.

11. We have heard the learned counsel for petitioner companies and perused the record carefully.

12. 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 none of the Statutory Authorities have filed any objection and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the Scheme of Demerger appended as Annexure – P/1 of the Petition.

13. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, 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 law, against the concerned persons, directors and officials of the petitioners.

14. 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 property, rights and powers of the Demerged Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Resulting Company but subject nevertheless to all charges now affecting the same; and

ii. That all the liabilities and duties relating to the Demerged Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Demerged Undertaking of the Demerged Company 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 as if the Resulting Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts of the Demerged Undertaking of the Demerged Company which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Resulting Company and be in full force and effect in favour of the Resulting Company and may be enforced by or against it as fully and effectually as if, instead of Demerged Undertaking of the Demerged Company had been a party or beneficiary or obliged thereto;

v. That the employees of the Demerged Undertaking of the Demerged Company shall be transferred to the Resulting Company in terms of the modified Scheme;

vi. That the Appointed Date for the Scheme shall be 01.04.2021 as specified in the Scheme;

vii. That the proceedings, if any, pending by or against the Demerged Undertaking of the Demerged Company be continued by or against the Resulting Company;

viii. 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.

ix. 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 on such certified copy being so delivered; and

15. 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.

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

17. The Company Petition CP (CAA) No. 40/Chd/Hry/2022 is allowed and disposed of accordingly.

