(2023) 06 NCLT CK 0075

In the National Company Law Tribunal

Case No : CA (CAA) No. 13/Chd/Chd/2023 (1st Motion)

Chandigarh Distillers & Services Private Limited Vs

Date of Decision : 12-06-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232
Competition Commission Act, 2002 — Section 5

Citation : (2023) 06 NCLT CK 0075

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

Bench : Division Bench

Advocate : Rahul Jogi

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a Joint First Motion Application filed by Applicant Companies namely; Bihar Distillers & Bottlers Private Limited (referred to as "Applicant Company/ Transferor Company") with Chandigarh Distillers & Services Private Limited (referred to as "Applicant Company No. 2/Transferee Company") under Section 230-232 of the 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 Amalgamation between the respective companies. The said Scheme is attached as Annexure-A-1 with the Application.

2. It is prayed by the Applicant Companies to dispense with the requirement of Convening of the meeting of the Equity Shareholders, Secured and Unsecured Creditors of all Applicant Companies.

3. It is submitted that the registered offices of the Applicant Companies are situated within the State of Himachal Pradesh, therefore, the territorial jurisdiction of Applicant Companies falls with this Bench.

4. The Applicant Companies are presently engaged in the business to trade, carry

on, manage the business of distillers, rectifiers, metroylators, brewers malsters and to make, produce, prepare, manufacture, purchase, sell import, export and generally do deal in country and foreign wines.

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

a. The Transferee Company is engaged in the business of manufacturing of rectified spirit extra neutral alcohol, ethanol and industrial alcohol. The Transferee Company has also set-up co-generation power plant and exporting the power to Bihar discoms. The Transferor Company has made investments in the Transferee Company, from time to time. The proposed amalgamation will result in greater efficiency in cash management of the amalgamated entity which can be deployed more efficiently to fund organic and inorganic growth opportunities;

b. Greater integration and greater financial strength and flexibility for the amalgamated entity which would result in maximizing overall shareholder value;

c. The proposed Amalgamation will also result in various benefits such as streamlining operations, combined capital resources, elimination of duplication of work and incidental cost in areas like overheads, accounts, company law and tax assessments, common administrative services, and reducing shareholding tiers and synchronization of efforts to achieve uniform corporate policy and ease in decision making at the group level of the Transferee Company;

d. Simplify corporate structure and reduce the number of legal entities in the group, paving the way for concentrated efforts and focus by the senior management to grow the business by eliminating duplicative communication and co-ordination efforts across the entities; and

e. Reduction in regulatory and legal compliances/ filings including accounting, reporting requirements, statutory and internal audit compliance requirements, tax filings, company law compliances, etc., and therefore reduction in administrative costs.

6. It is stated that the Board of Directors of the Transferor Company and the Transferee Company, in their meetings held on 13.02.2023 and 14.02.2023, respectively, have considered and unanimously approved the Scheme subject to the sanction of the same by this Tribunal. The copies of the Board Resolutions of the Transferor Company and the Transferee Company are attached as Annexure A-8 and A-9, respectively of the Application.

7. The appointed date of the Scheme is 01.04.2023 as defined in Part-II Clause 4.4 of Scheme of Amalgamation which is attached as Annexure- A-1 with the Application.

8. It is submitted that the Scheme (Annexure A-1) also takes care of the interest of the staff/workers and employees of the Applicant Companies, by virtue of Clause 14 of the Scheme.

9. It is stated that the Applicant Companies have filed an audited financial statement as on 31.03.2022 along with Provisional Unaudited financial statements as on 31.12.2022, with the application as Annexure- A-3, Annexure A-4, Annexure A-6, and Annexure A-7 respectively.

10. It is further submitted that in pursuance to Section 230 and Section 232 of the Act, the Applicant Companies have filed the certificate dated 02.03.2023 issued by the statutory auditor of the Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act which is attached as Annexure-A19 & A20 respectively with the Application.

11. It is further submitted that the valuation reports have been submitted by Mr. Subodh Kumar, an Independent Registered Valuer, bearing Registration No. IBBI/RV/05/2019/11705, which are attached as Annexure-6 of the Application. As per the said valuation reports dated 10.02.2023, the following share exchange ratio has been proposed in the Scheme:-

"The exchange ratio for each share of Bihar Distillers & Bottlers Private Limited for the shares of Chandigarh Distillers & Services Private Limited: 0.006 equity shares of Bihar Distillers & Bottlers Private Limited for one equity share of Chandigarh Distillers & Services Private Limited"

12. It is deposed by way of affidavits furnished by authorised signatories of the Applicant Companies that the Scheme does not involve any Corporate Debt Restructuring and there is no proposal to restructure the debt obligation of any creditors or debenture holders of Applicant Companies. The scheme does not involve any buyback of securities and there is no proposal for a reduction of share capital. It is further deposed that the applicant companies are not regulated or governed by the Securities and Exchange Board of India and the proposed transaction of Amalgamation in the scheme does not meet the threshold limits as specified under Section 5 of the Competition Commission Act, 2002. There is no enquiry, inspection, investigation, litigation or prosecution pending before any court or any judicial quasi-judicial authority under any law being in force against the applicant companies. The aforesaid affidavit has been attached as Annexure A-21 of the Application.

13. The Applicant Company have furnished the following documents:-

i. Proposed Scheme of Arrangement (Annexure A-1 with the application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure A-2 and Annexure A5 respectively with the Application).

iii. List of Equity Shareholders of the Applicant Companies as on 31.12.2022 along with consents furnished by way of affidavits (Annexure A-11 and Annexure A-15 respectively with the Application).

iv. List of Debenture holders of Applicant companies as on 31.12.2022 along with consent affidavits (Annexure A-14, Annexure A-18 of the application).

v. List of Secured and Unsecured Creditors of the Applicant Company No. 1 duly certified by S Tandon & Associates, Chartered Accountants as on 31.12.2022 along with consent affidavits (Annexure A-12 and A13 respectively with the Application).

vi. List of Secured and Unsecured Creditors of the Applicant Company No. 2 duly certified by AK Kalia & Associates, Chartered Accountants as on 31.12.2022 along with consent affidavits (Annexure A-16 and A-17 respectively with the Application).

vii. Certificate by the Statutory Auditor to the effect that the Accounting treatment proposed in the Scheme is in conformity with Section 133 of the Companies Act, 2013 (Annexure A-19 and A-20, respectively with the Application).

viii. Audited Financial Statement as on 31.03.2022 of the Applicant Companies (Annexure A-3 and Annexure A-6, respectively with the Application).

ix. Provisional Unaudited financial statements as on 31.12.2022 of the Applicant Company (Annexure A-3 and Annexure A-6, respectively with the Application).

x. Valuation Report/Share Exchange Ratio (Annexure A-10 with the Application)

14. The Transferor Company/ Applicant Company No. 1 i.e. Chandigarh Distillers & Services Private Limited was incorporated under the provisions of the Companies Act, 1956 on 29.09.2009 bearing CIN U40101HP2009PTC031224 with the Registrar of Companies Himachal Pradesh, and the Transferee Company/ Applicant Company No. 2 i.e. Bihar Distillers & Bottlers Private Limited was incorporated under the provisions of the Companies Act, 1956 on 30.05.2011 bearing CIN U15500CH2011PTC032998 with the Registrar of Companies Chandigarh.

15. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors which are as follows:

Name of the Applicant Companies

Shareholders along with their consent on affidavit

Creditors along with their consents on affidavit

Equity Shareholders

Consents submitted on affidavit

Debenture Holder

Consents submitted on affidavit

Secured Creditors

Consents submitted on affidavit

Unsecured Creditors

Consents submitted on affidavit

Applicant

Company No. 1

2

100%

3

100%

NIL

NA

NIL

NA

Applicant

Company No. 2

2

100%

3

100%

2

99.98%

260

92.3%

16. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Applicant Company No.1/Transferor Company:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. The meeting of the Debenture Holders of the Applicant Company No. 1 / Transferor Company is dispensed with as it has 3 (Three) Debenture Holder and the consent of all Debenture Holders have been received by way of affidavits.

c. Since, there is no Secured and Unsecured Creditors in the Applicant Company No. 1/Transferor Company. therefore, there is no scope for any meeting.

II. In relation to Applicant Company No. 2/Transferee Company:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. The meeting of the Debenture Holders of the Applicant Company No. 2/ Transferee Company is dispensed with as it has 3 (Three) Debenture Holder and the consent of all Debenture Holders have been received by way of affidavits.

c. The meeting of the Secured Creditors of the Applicant Company No. 2/ Transferee Company is dispensed with as it has 2 Secured Creditors and consent of one Secured Creditor holding 99.98% in value has been received by way of affidavit.

d. The meeting of the Unsecured Creditors of the Applicant Company No. 2/ Transferee Company is dispensed with as it has 260 Unsecured Creditors and consent of Unsecured Creditors holding 92.3% in value have been received by way of affidavits.

20. 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) Official Liquidator and (d) 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 separate affidavits stating the Sectoral regulators governing the respective companies while filing the second motion petition.