(2019) 01 NCLT CK 0033

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (CAA)-75/ND/2018, Company Application No. CA (CAA)35/ND Of 2018

Cinnia Traders Pvt. Ltd. APPELLANT

Vs

Sanctity Industries Pvt. Ltd. RESPONDENT

Date of Decision : 25-01-2019

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2019) 01 NCLT CK 0033

Hon'ble Judges : Ina Malhotara, J;Deepa Krishan, Member (Technical)

Bench : Division Bench

Advocate : Reena Jain, Sonam Sharma, Shubham Pandey, Divey Kant, Lakshmi Gurung

Judgement

1. This Joint application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies

(Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval

of the Scheme of Amalgamation. The copy of the Scheme has been placed on record.

2. A perusal of the petition discloses that initially the First Motion application seeking dispensation from convening the meeting of Shareholders and

Creditors was filed before this Bench and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, this Tribunal

vide its order dated 26.07.2018 issued directions to dispense with convening the meetings of equity shareholders, secured and unsecured creditors of

the companies. On 26.07.2018 the Petitioners were directed to carry out publication in the newspapers Business Standard (English, Delhi edition) as well as in Hindi Daily â??Jansattaâ?? (Delhi edition). In addition to the public notice, notices were directed to be served on to the Regional Director

(Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant

sectoral regulators.

3. It is seen from the records that the Petitioners have filed an affidavit dated 08.09.2018 affirming compliance of the order passed by the Tribunal

dated 26.07.2018. The same affidavit discloses that the petitioners have effected the newspaper publication as directed in English Daily 'Business

Standard' (Delhi Edition) as well as in Hindi Daily 'Business Standard' (Delhi Edition) on 29.08.2018 in relation to the date of hearing of the petition.

Further, the affidavit also discloses that copies of petition were duly served to the Registrar of Companies, Regional Director, Northern Region and

Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed

on record.

4. The report of the statutory auditors certifying that the Accounting Standards as required u/s 133 of the Companies Act 2013 had been adhered to is

on record. The Audited Financial Statements for the year ended 31st March, 2017 along with the provisional financial statements as on 28.02.2018 of

the applicant company has been filed.

5. The share exchange ratio as per Scheme is as follows:

32 Equity Shares of Rs.10/- each of Transferee Company for every 1 Equity Share of Rs.10/- each held in the Transferor Company"".

6. The Regional Director has filed its representation dated 27.09.2018 in which it is submitted that they have they have no objection to the sanction of

the proposed scheme. No prosecution has been filed and no inspection or investigation has been conducted in respect of the petitioner companies.

7. The Official Liquidator has filed a report on 14.09.2018 wherein it has been stated that he has not received any complaint against the proposed

Scheme from any person/ party interested in the scheme in any manner and that the affairs of the Applicant Companies do not appear to have been

conducted in a manner prejudicial to the interest of its members, creditors or public interest.

8. As per the order dated 05.10.2018 the Income Tax department were directed

to file the reply. However, no reply has been filed by the Income Tax Department.

9. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

10. An affidavit in relation to the Sectoral regulators to whom notice to be given has been filed in which it has been brought to the notice of tribunal that there are no other sectoral regulators to whom notice are required to be given.

11. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

12. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme 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.

13. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any granting exemption from payment of stamp duty, taxes including income tax, GST etc or any other charges, if any, and payment in accordance with law or in respect with any permission/compliance with any other requirement which may be specifically required under any law.

14. This tribunal doth further order that upon scheme of Amalgamation by way of Merger coming into effect;

a. That Transferor Company shall stand dissolved without being wound up.

b. That the entire business, properties and assets of the Transferor company, be transferred without further act or deed to the Transferee company and accordingly the same shall, pursuant to section 232 of the Act, be transferred to and vest in the Transferee company, but subject nevertheless to

all charges now affecting the same;

c. That all the assets and liabilities including Income Tax and all other Statutory dues, if any, of the Transferor company, be transferred without further

act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liability

and duty of the transferee company;

d. All employees of the Transferor Company in service on the effective date shall become the employees of the Transferee Company on and from

such date without any break or interruption in service and upon terms and conditions not less favorable than those subsidiary with the Transferor

Company on that date.

e. The Appointed date for Amalgamation shall be 1 April 2017.

f. That all proceedings now pending by or against the transferor companies, be continued by or against the transferee company;

15. That petitioners 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 for registration and on such certified copy being so delivered, the transferor companies shall be dissolved and the Registrar of Companies

shall place all documents relating to the transferor company and registered with them and shall consolidate the files of the companies, is accordingly

duly approved and sanctioned in terms of the above.

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

