(2022) 08 NCLT CK 0009

In the National Company Law Tribunal

Case No : C.A. (CAA)/128/MB /2022

Classic Stripes Private Limited Vs

Date of Decision : 12-08-2022

Acts Referred:
Companies Act, 2013 — Section 230, 230(1)(a), 230(1)(b), 230(5), 231, 232
Companies (Compromises Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2022) 08 NCLT CK 0009

Hon'ble Judges : P.N. Deshmukh, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar

Final Decision : Allowed

Judgement

Justice P.N. Deshmukh (Retd.), Member Judicial

1. This Court is convened by video conferencing.

2. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Demerger of CLASSIC STRIPES PRIVATE LIMITED ('First Applicant Company' / 'Demerged Company') with ASTARC INFRA DEVELOPERS PRIVATE LIMITED ('Second Applicant Company' / 'Resulting Company') and their respective Shareholders ('Scheme').

3. The Learned Counsel for the Applicant Companies submits the Demerged Company has broadly two main business undertakings:

a. Business of manufacturing printed self-adhesive Poly Vinyl Chloride (PVC) Stripes ("Manufacturing Business Undertaking")

b. Business of real estate development on land parcels held either directly or through Special Purpose Vehicles (SPV) ("Demerged Undertaking/Real Estate Business Undertaking").

4. The Learned Counsel for the Applicant Companies submits that the Resulting Company is formed with the main object of carrying on the business of real estate activities.

5. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 11th April, 2022 have approved the proposed Scheme with the Appointed Date as 1st March, 2022. The Board Resolution approving the Scheme for the First Applicant Company and Second Applicant Company are annexed as Annexure 'C1' and Annexure 'C2' respectively to the Company Scheme Application.

6. The Appointed Date for the Scheme of Demerger is 1st day of March, 2022.

7. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st day of March, 2021 is as under:

i. The Authorized Share Capital of the First Applicant Company is Rs. 188,01,00,000/- divided into 18,80,10,000 Equity shares of Rs. 10/- each. Issued, Subscribed and Paid-up Share Capital of the First Applicant Company is Rs. 29,35,81,600/- divided into 2,93,58,160 Equity shares of Rs. 10/- each

ii. The Authorized Share Capital of the Second Applicant Company is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs. 10/- each. Issued, Subscribed and Paid-up Share Capital of the Second Applicant Company is Rs. 1,00,000/-divided into 10,000 Equity Shares of Rs. 10/- each.

8. The Learned Counsel for the Applicant Companies further submits that the rationale for the Scheme is as follow:

a. Demerged Company is engaged in the business of manufacturing of printed self-adhesive Poly Vinyl Chloride (PVC) Stripes along with Real Estate business.

b. Given that manufacturing of PVC Stripes and Real Estate Business are completely diversified businesses attracting different ecosystem, risks, operation strategies and investors, it has become imperative for the Demerged Company to reorganize itself in a manner that allows imparting greater focus on each of its businesses. With this objective, the Demerged Company is desirous of segregating its two businesses for enhancing its operational efficiency while it continues with its Manufacturing Business Undertaking.

c. The proposed demerger pursuant to this Scheme is expected, inter alia, to result in following benefits:

i. Segregation and unbundling Bifurcation of these businesses will enable unlocking value of each business thereby paving way for focused growth with a view to create significant stakeholder value and at the same time allow investors to allocate their portfolio into separate entities, focused on the distinct entities. Further, it will enable independent and distinct capital allocation approach and balance sheet management based on the distinct needs of each business.

ii. The Scheme will also enable the Demerged Company and the Resulting Company to focus and enhance its respective businesses by streamlining operations and its management structure ensuring better and more efficient management control.

iii. The segregation shall enable them to move forward independently, with greater focus and specialization, building on their respective capabilities and their strong brand presence. It will also help to channelize resources required for respective businesses and attracting right talent and providing enhanced growth opportunities to existing talent in line with a sharper strategic focus on each business segment under separate entities.

iv. Thus, the demerger would help in achieving the desired operating structure and shall inter-alia have following benefits:

1. Create sector focused companies;

2. Streamline the management structure;

3. Unlock value for shareholders;

4. Ring-fence businesses from each other; and

5. Better risk management.

d. The proposed scheme of Arrangement is in the interest of the shareholders and other stakeholders of the Demerged and Resulting companies as it would enable a focused business approach for maximization of benefits to all the stakeholders.

9. The Learned Counsel for the Applicant Companies submits that the consideration for the Scheme is as follows:

"1 (One) fully paid-up Equity Share of Rs. 10/- each of the Resulting Company shall be issued and allotted as fully paid up to the equity shareholders of the Demerged Company for every 2935 (Two-thousand nine hundred and thirty-five) Equity Share of Rs. 10/- each held by the Equity Shareholder in the Demerged Company"

10. The Learned Counsel for the Applicant Companies submits that as on 1st day of March, 2022, there are 5 (Five) equity shareholders in First Applicant Company, all the Equity Shareholders of the First Applicant Company have given their consent in writing to the proposed Scheme. The Consent Affidavits of the First Applicant Company are annexed as Annexure 'F1-F5'' to the Company Scheme Application. In view of the Consent Affidavits filed by all the Equity Shareholders of the First Applicant Company, the meetings of the Equity Shareholders of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with.

11. The Learned Counsel for the Applicant Companies submits that as on 1st day of March, 2022, there are 5 (Five) equity shareholders in Second Applicant Company, all the Equity Shareholders of the Second Applicant Company have given their consent in writing to the proposed Scheme. The Consent Affidavits of the Second Applicant Company are annexed as Annexure 'I1-I5' to the Company

Scheme Application. In view of the Consent Affidavits filed by all the Equity Shareholders of the Second Applicant Company, the meetings of the Equity Shareholders of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

12. The Learned Counsel for the Applicant Companies submits that the First Applicant Company has 3 (Three) Secured Creditors aggregating to Rs. 57,17,76,521/- (Rupees Fifty-Seven Crores Seventeen Lakhs Seventy-Six Thousand Five Hundred and Twenty-One Only) as on 1st March, 2022. As, the present Scheme of Demerger of Classic Stripes Private Limited (Demerged Company) with Astarc Infra Developers Private Limited (Resulting Transferee Company) is an arrangement between the First Applicant Company and its shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no Compromise and/or Arrangement with the Secured Creditors as no sacrifice is called for, the meetings of the Secured Creditors of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. However, the First Applicant Company undertakes to serve notice of application to all its secured creditors as on 1st day of March, 2022. The Auditor's Certificate verifying the list of Secured Creditors of the First Applicant Company is annexed as "Annexure G" to Company Scheme Application.

13. The Learned Counsel for the Applicant Companies submits that the Second Applicant Company do not have any Secured Creditors, therefore, the question of convening and holding of the meeting of Secured Creditors of the Second Applicant Company does not arise. The Auditor's Certificate verifying NIL Secured Creditors in the Second Applicant Company is annexed as "Annexure J" to Company Scheme Application.

14. The Learned Counsel for the Applicant Companies submits that the First Applicant Company has 303 (Three Hundred and three) unsecured creditors aggregating Rs. 25,39,77,654/- (Rupees Twenty-Five Crores Thirty-Nine Lakhs Seventy-Seven Thousand Six Hundred And Fifty Four Only) as on 1st day of March, 2022. As, the present Scheme of Demerger of Classic Stripes Private Limited (Demerged Company) with Astarc Infra Developers Private Limited (Resulting Company) is an arrangement between the First Applicant Company and its shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no Compromise and/or Arrangement with the Unsecured Creditors as no sacrifice is called for, the meetings of the Unsecured Creditors of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. However, the First Applicant Company undertakes to serve notice of application to all its unsecured creditors as on 1st day of March, 2022.The Auditor's

Certificate verifying the list of Unsecured Creditors of the First Applicant Company is annexed as "Annexure H" to Company Scheme Application.

15. The Learned Counsel for the Applicant Companies submits that the Second Applicant Company has 1 (One) unsecured creditor aggregating Rs. 10,00,000/- (Rupees Ten Lakhs Only) as on 1st day of March, 2022. As, the present Scheme of Demerger of Classic Stripes Private Limited (Demerged Company) into Astarc Infra Developers Private Limited (Resulting Company) is an arrangement between the Second Applicant Company and its shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no Compromise and/or Arrangement with the Unsecured Creditors as no sacrifice is called for, the meetings of the Unsecured Creditors of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. However, the Second Applicant Company undertakes to serve notice of application to all its unsecured creditors as on 1st day of March, 2022. The Auditor's Certificate verifying the list of Unsecured Creditors of the Second Applicant Company is annexed as "Annexure K" to Company Scheme Application.

16. The First Applicant Company is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax Authority within whose jurisdiction the First Applicant Company is assessed to tax, bearing PAN number AAFCR5312Q having IT ward jurisdiction DCIT, Circle 1(2)(1), Mumbai; and (4) GST Authority within whose jurisdiction the First Applicant Company is assessed to GST, bearing GSTIN 27AAFCR5312Q1ZY having jurisdiction Commissionerate - Mumbai-East, Division V, Range-IV, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

17. The Second Applicant Company is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; and (3) Income Tax Authority within whose jurisdiction the Second Applicant Company is assessed to tax, bearing PAN number AAOCA2970L having IT ward jurisdiction ITO, Ward 9(1)(1),Mumbai, pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

18. That the Applicant Companies to file Affidavits of Service respectively, with the Registry proving dispatch of notices to creditors and regulatory authorities as

stated above, and report to this Tribunal that the directions have been duly complied with.

19. Accordingly, C.A.(CAA)/128/MB/2022 is allowed.

