(2023) 02 NCLT CK 0032

In the National Company Law Tribunal

Case No : CA (CAA) No.02/Chd/Hry/2023 (1st Motion)

Continental Automotive Brake Systems (India) Private Limited Vs

Date of Decision : 10-02-2023

Acts Referred:

Companies Act, 2013 — Section 66, 102, 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 230, 230(3), 232, 232(2)(e)
Companies (Compromises, Arrangements and Amalgamations) Rules 2016 — Rule 6, 8, 14

Citation : (2023) 02 NCLT CK 0032

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

Bench : Division Bench

Advocate : Shivam Narang

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a First Motion Application filed by Applicant Company namely; Continental Automotive Brake Systems (India) Private Limited (for short hereinafter referred to as “Applicant Company/Transferor Company No.1”) 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 Continental Automotive Brake Systems (India) Private Limited (“Applicant Company/Transferor Company No.1”) and Continental Lighting India Private Limited (“Non-Applicant Company/Transferor Company No.2”) and Continental Automotive Components India Private Limited (“Non-Applicant Company/Transferee Company”). The said Scheme is attached as Annexure-M with the Application.

2. The Applicant Company has prayed for dispensing with the requirement of convening the meeting of the Secured Creditors of the Applicant Company/ Transferor Company No.1. It is further prayed by the Applicant Company to

convene the meetings of the Equity Shareholders and Unsecured Creditors of Applicant Company/Transferor Company No.1 (having debt equal to or more than Rs.5,00,000/-).

3. The Applicant Company/Transferor Company No.1 is presently engaged in the business of manufacturing, developing, sale and supply of brakes of all descriptions including frictional, dynamic, slipper, mechanical, magnetic, vacuum servo, hydraulic, electronic, bandbrakes, electro-mechanical and other power brakes etc.

4. It is submitted that the registered office of the Applicant Company/Transferor Company No.1 is situated in the State of Haryana and the registered office of the Non-Applicant Company/Transferor Company No.2, as well as the Non-Applicant Company /Transferee Company, is situated in the State of Karnataka. Therefore, the Applicant Company/Transferor Company No.1 is under the territorial jurisdiction of this Bench.

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

a. greater integration and greater financial strength and flexibility for the combined entity leading to stronger negotiation power in the market and strengthened leadership in the industry.

b. business synergies on account of consolidation of manufacturing infrastructure, consolidation of support services divisions

c. greater efficiency in cash management and unfettered access to large cash flows, effective and centralized management of funds generated by the combined business

d. cost savings on account of the reduction of various statutory and regulatory compliances, standardization and simplification of business processes.

6. It is stated that the Board of Directors of Transferor Companies and Transferee Companies in its meetings held on 12.12.2022 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the Board Resolution of the Applicant Company is attached as Annexure-J, K and L, respectively with the Application.

7. The appointed date of the Scheme is 01.04.2022 as defined in Part-II Clause 4.3 of Scheme of Amalgamation which is attached as Annexure-M with the Application.

8. It is stated that Applicant Company has filed the audited financial statements as on 31.03.2022 and Unaudited financial statements as on 30.11.2022 which are attached as Annexure B & Annexure C respectively with the Application.

9. It is further submitted that in pursuance to Section 230 and Section 232 of the Act, the Applicant Company has filed the certificate dated 21.12.2022 issued by the independent auditor of the Applicant Company certifying that the Scheme is

in compliance with the Accounting Standards under Section 133 of the Act which is attached as Annexure-S with the Application.

10. It is further submitted by the Counsel for Applicant Company that as per Valuation Report dated 13.12.2022 submitted by Ms Sushma Rajgaria, Registered Valuer (S&FA) bearing registration No. IBBI/RV/04/2020/13156 is attached as Annexure- N with the Application. The Share Exchange Ratio is given below:-

? "1 Equity Share of Rs. 10.00 (Rupees Ten) each Fully Paid-up of Transferee Company in lieu of every 5 equity shares of Rs. 10.00 (Rupees Ten) each Fully Paid-up in Transferor Company No. 01 ("New Equity Shares")."

11. It is deposed by way of an Affidavit through the authorised representative of the Applicant Company that no other sectoral regulators/statutory authorities are applicable apart from the Statutory Authorities i.e The Central Government through Regional Director (Northern Region), Registrar of Companies (Delhi and Haryana), Official Liquidator attached with Hon'ble Punjab & Haryana High Court, Jurisdictional Income Tax Authority to Applicant Company. Further, the Applicant Company is not required to issue notice upon the Competition Commission of India by virtue of the exemption provided under Notification No. S.O. 988(E) dated 27th March 2017 read with Notification No. S.O. 1192(E) as issued by the Ministry of Corporate Affairs. The aforementioned affidavit with respect to the sectoral regulator is attached as Annexure- T with the application.

12. It is deposed by way of affidavit that the Scheme of Amalgamation of the Applicant Company does not involve the reduction of share capital in terms of Section 66 of the Companies Act, 2013 and it is further deposed that the Scheme does not provide for any arrangement with the outside creditors and thus thereby Corporate Debt restructuring is not applicable to the Scheme. The aforesaid affidavit is attached as Annexure- U with the application.

13. The authorized signatory of Applicant Company has deposed by way of affidavit that there are no investigations or proceedings of any manner before any authority including under Sections 210 & 226 of the Companies Act, 2013. The Applicant Company further submits that they have not filed any other application with any other adjudicating authority under Section 230-232 of the Companies Act, 2013. The affidavit related to the legal proceedings is attached as Annexure- V with the application.

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

i. Proposed Scheme of Amalgamation (Annexure M with the application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Company (Annexure A with the Application).

iii. List of Equity Shareholders of the Applicant Company duly certified by Shivakumara Swamy & Associates, Chartered Accountants as on 13.12.2022

(Annexure P with the Application).

iv. List of Secured Creditors of the Applicant Company duly certified by Shivakumara Swamy & Associates, Chartered Accountants as on 13.12.2022 stating that there are nil Secured Creditors (Annexure Q with the Application).

v. List of Unsecured Creditors of the Applicant Company duly certified by Shivakumara Swamy & Associates, Chartered Accountants as on 13.12.2022 (Annexure R with the Application).

vi. 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 S with the Application).

vii. Audited Financial Statement as on 31.03.2022 of the Applicant Company (Annexure B with the Application).

viii. Unaudited Financial Statements for the period ended on 30.11.2022 of the Applicant Company (Annexure C with the Application).

ix. Valuation Report and Share Exchange Ratio (Annexure N with the Application).

x. Affidavits of sectoral regulators of the Applicant Company (Annexure-T with the Application).

xi. Affidavit with regard to no legal proceedings pending against the Applicant Company (Annexure V with the Application).

15. The Applicant Company/Transferor Company No. 1 i.e. Continental Automotive Brake Systems (India) Private Limited was incorporated under the provisions of the Companies Act, 1956 on 03.01.2008 bearing CIN U74900HR2008PTC037519 with the Registrar of Companies Delhi & Haryana.

16. The Applicant Company 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 Shareholder

Consents submitted on affidavit

Preference Shareholders

Consents submitted on affidavit

Secured Creditors

Consents submitted on affidavit

Unsecured Creditors

Consents submitted on affidavit

Applicant Company

2(Two)

Meetings to be

Convened

Nil

N/A

Nil

NA

250

(Two hundred & Fifty

Meetings to be Convened

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

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

a. The meeting of the Equity Shareholders of Applicant Company /Transferor Company No.1 be convened as prayed for on 24.03.2023 (Friday) at 10:30 a.m through video conferencing. The quorum of the meeting of the equity Shareholders shall be 2 (Two).

b. Since, there are no Secured Creditors in the Applicant Company/Transferor Company. Therefore, there is no scope for any meeting.

c. The meeting of the Unsecured Creditors of Applicant Company No.1/Transferor Company (having debt equal to or more than Rs. 5,00,000/- (Rupees Five Lakhs Only) be convened as prayed for 24.03.2023 (Friday) at 12:30 p.m through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the Unsecured Creditors shall be 40% in value of the Unsecured Creditors having debt value more or equal to Rs.5,00,000/-);

II. In case the required quorum as noted above for the respective meetings of Equity Shareholders and Unsecured creditors is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.

III. Mr Arvind Moudgil, Advocate, Address: #1102, Sector 36C, Chandigarh Mobile No. 9872417343 email id: arvindmoudgil@gmail.com is appointed as the Chairperson for the meetings to be called under this order. An amount of ☐ 1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid for his services as the Chairperson.

IV. Mrs Rahish Pahwa, Advocate, Address: #3147, Sector 20-D, Chandigarh, Mobile No. 9417513669, e-mail id: rahishpahwa69@gmail.com, is appointed as the Alternate Chairperson for the meetings to be called under this order. An amount of ☐ 1,00,000/- (Rupees One Lakh Only) be paid for her services as the Alternate Chairperson.

V. Mr Rajeev Sanger, Company Secretary, Address: SCO- 47, Second Floor, Sector-4, Panchkula, Haryana-134112. Mobile No. +91 9736700139 Email id: csrajeevsanger@gmail.com is appointed as the Scrutinizer for the above meetings to be called under this order. An amount of ☐ 80,000/-(Rupees Eighty Thousand Only) be paid for his services as the Scrutinizer.

VI. The fee of the Chairperson, Alternate Chairperson, Scrutinizer and other out-of-pocket expenses for them shall be borne by the Applicant Company VII. It is further directed that individual notices of the said meetings shall be sent to Equity Shareholders & Unsecured Creditors by Applicant Company through registered post or speed post or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and time as aforesaid, together with a copy of the Scheme, copy of the explanatory statement with Valuation Report/Share Exchange Ratio as discussed in para 10 of this order required to be sent under the Companies Act, 2013 and the applicable Rules and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

VIII. It is further directed that along with the notices, Applicant Company shall also send, statements explaining the effect of the scheme on the Equity Shareholders & Unsecured creditors, key managerial personnel, promoters and non-promoter members, etc. along with the effect of the scheme of arrangement on any material interests of the Directors of the Company or the debenture trustees if any, as provided under sub-section (3) of Section 230 of the Act.

IX. It is also directed that the Provisional Financial Statements of Applicant Company not older than 6 months from the date of the meeting be also circulated for the aforesaid meeting(s) in terms of Section 232 (2) (e) of the Act.

X. The Applicant Company shall publish an advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and place and the time of the meeting as aforesaid, to be published in "The Financial Express " (English) and "Jansatta" (Hindi)), both in Delhi NCR Edition. The publication shall also indicate that the explanatory statement required to be furnished pursuant to Sections 230 & 232 read with Section 102 of the Companies Act, 2013 can be obtained free of charge at the registered office of the Applicant Company. The Applicant Company shall also publish the notices on its websites, if any.

XI. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Companies under the Act and the Rules framed thereunder.

XII. The Scrutinizer's report will contain his/her findings on compliance to the directions given in Para VII to XI above.

XIII. The Chairperson shall be responsible to report the result of the respective meeting(s) to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. The Chairperson would be fully assisted by the authorized representative/Company Secretary of the Applicant Company and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XIV. The Applicant Company shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (ii) Jurisdictional Registrar of Companies; (iii) the Official Liquidator; (iv) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Company; and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

XV. The Applicant Company shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any shareholder or creditor entitled to attend the meeting as aforesaid.

XVI. The authorized representative of the Applicant Company shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting(s).

XVII. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies

18. With the aforesaid directions, this First Motion Application stands disposed of.

A copy of this order be supplied to the learned counsel for the Applicant Company who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.

