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(2023) 01 NCLT CK 0002

In the National Company Law Tribunal

Case No : C.A.(CAA)/281/MB/2022

Coolberg Beverages Private Limited Vs

Date of Decision : 06-01-2023

Acts Referred:

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

Citation : (2023) 01 NCLT CK 0002

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

Bench : Division Bench

Advocate : Hemant Seth And Co

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member Technical

1. The Court convened by videoconference today.

2. The Learned Counsel for the Applicant Companies states that the present Scheme is Scheme of Arrangement between Ghodawat Consumer Limited (‘Resulting Company/Second Applicant Company’) and Coolberg Beverages Private Limited (‘Demerged Company/First Applicant Company’) and their respective shareholders (‘the Scheme’ or ‘this Scheme’) under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder.

3. The Learned Counsel for the Applicant Companies states that the resolutions passed by the Board of Directors of the respective Demerged Company and Resulting Company in their meetings held on 28 November, 2022 approved the Scheme. The Appointed Date fixed under the Scheme is 1st January 2023 or any other date as may be decided by the NCLT. The Board Resolution approving the Scheme for the Applicant Companies is annexed as Annexure C & F, respectively to the Company Scheme Application.

4. The Share Capital of the Applicant Companies as on 28 November, 2022 is as

under:

i. The Authorised Share Capital of the First Applicant Company is Rs. 1,81,75,000 divided into 80,000 Equity Shares of Rs. 10/- each and 13,900 preference shares of Rs. 1250 each. Issued, subscribed and paid-up capital of the First Applicant Company is Rs. 3,38,800 divided into 33,880 Equity Shares of Rs. 10/- each.

ii. The Authorised Share Capital of the Second Applicant Company is Rs. 75,00,00,000 divided into 7,50,00,000 Equity Shares of Rs. 10/- each. Issued, subscribed and paid-up capital of the Second Applicant Company is Rs. 65,89,77,840 divided into 6,58,97,784 Equity Shares of Rs. 10/- each.

5. The Learned Counsel for the Applicant Companies further submits the introduction and rationale for the Scheme:-

The Demerged Company / The First Applicant Company

The First Applicant Company is inter alia engaged in the business of manufacturing and trading of Non-Alcoholic Beverages, trading of agriculture products (including sugar, etc.) and other foods and beverages (including staples, etc.)

The Resulting Company / The Second Applicant Company

The Second Applicant Company is inter alia engaged in the business of manufacturing and marketing products mainly under the brand as 'Star'.

Rationale of the Scheme:

a) Resulting company is one of the fastest growing FMCG consumer companies in India with a wide product portfolio including a strong network of distribution and brand. 'Impulse foods' or 'food and refreshments' is one of key business segment for Resulting company and thus on a strategic review for future growth of said business segment, the Companies have decided to undertake demerger of the Demerged Undertaking from Demerged company to Resulting Company. The Demerger is in line with the Resulting Company's strategy to build a sustainable and profitable 'impulse foods' or 'food and refreshments' business in India.

b) Demerger shall improve the financial strength of the combined business. Particularly, the Resulting Company believes that the combined business will augment industry-leading revenue growth and profitability. Further, the Companies expect that their combined balance sheet will provide diverse strategic options and flexibility arising from cost efficiencies and synergies such as optimization of sales, general and administration (SG&A) costs, consolidation of delivery operations.

c) It shall enable the combined business to derive benefits by way of creating more opportunity for growth in dealership network / customer relationships / value creation through enhanced attention to brand building including the corporate brand, develop stronger relationships across its partner ecosystem,

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using the augmented intellectual capital and stronger implementation capabilities resulting from the Demerger.

d) It shall enable the Companies to cross-sell and up-sell opportunities as part of one combined business, achieve a higher number of active dealer / clients, cater to a wider customer base located in larger geography and diversify their combined revenue / product profile with reduced concentration risks.

e) It shall help the combined business exploit the complementary capabilities of both Companies. Particularly, it gives the combined business the opportunity to consolidate its position in the impulse foods sector.

f) It shall significantly enhance scale for the combined business and bridge the gap between the Companies and their peers. With this enhanced scale, the Resulting Company should be able to drive a cohesive "go to market" strategy.

6. The Learned Counsel for the Applicant Companies further submits that, in consideration of the Scheme, as determined by the Share Entitlement report dated 28 November 2022 issued by Darshan Jayantilal Rathod, Registered Valuer and annexed to the Company Scheme Application is as follows:

Upon this Scheme becoming effective and as consideration for the Scheme, Resulting Company shall, without any application or deed, issue and allot equity shares ("New Equity Shares"), credited as fully paid up, to the extent indicated below, to the equity and preference shareholders of Demerged Company and whose names appear in the Register of Members of Demerged Company on the Record Date, or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Resulting company/ Demerged Company in consideration for the transfer of the Demerged Undertaking in the following proportion viz.:

For equity shareholders

"175 (One hundred and seventy five) equity shares of Resulting Company of Rs. 10 fully paid up for every 06 (six) equity shares of Demerged Company of Rs. 10/- fully paid up".

7. The Learned Counsel for the First Applicant Company submits that there are 53 (Fifty Three) Equity Shareholders in the First Applicant Company and out of the 53 Equity Shareholders, 47 of the equity shareholders holding 97.78% of the total paid up equity share capital have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by the Equity Shareholders of the First Applicant Company by 97.78% of the equity shareholders, the meeting 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. The consent affidavits are annexed as Annexure M2 to the Company Scheme Application.

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8. The Learned Counsel for the Second Applicant Company submits that there are 8 (Eight) Equity Shareholders in the Second Applicant Company and all the Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Second Applicant Company, the meeting 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) is hereby dispensed with. The consent affidavits are annexed as Annexure N2 to the Company Scheme Application.

9. There are no Secured Creditors in the First Applicant Company, therefore, the question of conveying and holding the meeting and issue of notices to the Secured Creditors of the First Applicant Company does not arise.

10. There are 7 (Seven) Secured Creditors of the outstanding value of Rs. 3,04,74,57,281 (Three Hundred and Four Crores Seventy-Four Lakhs Fifty Seven Thousand Two Hundred Eighty One) in the Second Applicant Company and the secured creditors amounting to 96.50% have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by Secured Creditors of the Second Applicant Company, the meeting of the Secured creditors of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with. The consent affidavits are annexed as Annexure K3 to the Company Scheme Application.

11. The Learned Counsel for the Applicant Companies submits that as on 31 October 2022, there are 93 Unsecured Creditors of the outstanding value of Rs. 12,62,64,333 (Twelve Crores Sixty Two Lakhs Sixty Four Thousand Three Hundred Thirty Three) in the First Applicant Company and there are 1453 (One Thousand Four Hundred Fifty-Three) Unsecured Creditors of the outstanding value of Rs. 32,83,45,015.63 (Thirty-Two Crores Eighty-Three Lakhs Forty Thousand Fifteen Only) in the Second Applicant Company. The present Scheme is an arrangement between the 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 Creditors as no sacrifice is called for. The rights of the Unsecured Creditors will not be affected as all the creditors would be paid off in the ordinary course of business. In view of above, no meeting of Unsecured Creditors of the Applicant Companies is required to be convened. The Applicant Companies undertakes to intimate all its Unsecured Creditors as on 31st October, 2022 by sending notices through R.P.A.D or by Email or by speed post or by courier or hand delivery of the proposed Scheme with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Company, failing which, it shall be presumed that they have no representations

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to make on the proposed Scheme. The Auditor's Certificate verifying the list of Unsecured Creditors of the Applicant Companies as on 31st October, 2022 are annexed and marked as Annexure L1 and L2, respectively, to the Company Scheme Application.

12. The Applicant Companies are accordingly directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessments are made i.e. for the First Applicant Company / Demerged Company, Ward 9(1)(1), Mumbai, having PAN No. AAGCC7335R, for the Second Applicant Company / Resulting Company, Circle1, Kolhapur having PAN No. AABCG7301E (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Concerned Registrar of Companies (iv) concerned Goods and Services Tax Authority, pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, through R.P.A.D or by Email or by speed post or by courier or hand delivery with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme.

13. The Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the Regulatory Authorities and dispatch of notices to Creditors of the Applicant Companies and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

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