(2022) 11 NCLT CK 0079

In the National Company Law Tribunal

Case No : C.P. (CAA) No. 109/KB/2022 Connected with C.A. (CAA) No. 24/KB/2022

Dayal Marketing Private Limited Vs

Date of Decision : 23-11-2022

Acts Referred:

Companies Act, 2013 — Section 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(1), 230(6), 232, 232(1), 232(3), 232(3)(i), 232(4)
Evidence Act, 1872 — Section 65B
Reserve Bank of India Act, 1934 — Section 45IA

Citation : (2022) 11 NCLT CK 0079

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Arun Kumar Mishra, Shashi Agarwal, Harihara Sahoo

Final Decision : Disposed Of

Judgement

Rohit Kapoor (Judicial)

(1) The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of Dayal Marketing Private Limited, being the Petitioner No.1 abovenamed ("Transferor Company No. 1" or "Petitioner No. 1" or "DMPL"), Dhankuber Tradecom Private Limited, being the Petitioner No. 2 abovenamed ("Transferor Company No. 2" or "Petitioner No. 2" or "DTPL"), Integrated Life Fiscal Services Private Limited, being the Petitioner No. 3 abovenamed ("Transferor Company No. 3" or "Petitioner No. 3" or "ILFSPL"), and Trimudra Real Estates Private Limited being the Petitioner No. 4 abovenamed abovenamed ("Transferor Company No. 4" or "Petitioner No. 4" or "TRPL") with Dadoo Finance & Investments Private Limited, being the Petitioner No. 5 abovenamed ("Transferee Company" or "Petitioner No. 5" or "DFIPL") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st day of April, 2021 in the manner and on the terms and conditions stated in the said Scheme of

Amalgamation ("Scheme"). (Page No. 63-81 of the Petition)

(2) The Petition has now come up for final hearing. Authorised Representative for the Petitioner submits as follows: -

(a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 11th January, 2022 respectively. (Page No. 377-386 of the Petition)

(b)The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

i) Reduce overheads and administrative, managerial and other expenditure;

ii) Provide greater efficiency and more optimal utilization of resources;

iii) Reduce legal and regulatory compliances;

iv) Create enhanced value for all stakeholders of the respective companies;

v) Reorganize businesses to optimize for operational efficiency, rationalize for cost and streamline for growth, providing enhanced resources and economies of scale. The merged entities shall be registered as non-banking finance company with the Reserve bank of India.

(c) The Statutory Auditors of the Petitioner Companies have by their certificates dated 17th January, 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. (Page No. 387-396 of the Petition)

(d)No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

(e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Shri Manish Gadia, Registered valuer having Registration No. IBBI/ RV/06/2019/11646. (Page No. 355-376 of the Petition)

(f) The shares of the Petitioner Company Nos. 1,2,3,4 and 5 are not listed on the stock exchanges.

(g)By an order dated 26th April, 2022 pronounced on 13th May, 2022 in Company Application (CAA) No. 24/ KB/ 2022, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act: -

Meeting(s) dispensed: Meetings of the Equity Shareholders and Creditors of the Petitioner No. 1, Petitioner No. 2, Petitioner No. 3, Petitioner No. 4 and Petitioner No. 5 are dispensed-with under Section 230(1) read with Section 232(1) of the Act.

(h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 23rd August, 2022 the instant petition was admitted by this Tribunal and fixed for hearing on 27th September, 2022 upon issuance of notices to the Statutory/ Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 23rd August, 2022, the Petitioner(s) have duly served such notices by hand delivery and speed post and an affidavit of compliance duly affirmed on 08th September, 2022 in this regard has been filed by them and accordingly the Petitioners have duly served such notices by hand delivery and speed post upon: -

Sl. No.

Statutory/ Sectoral Authorities

Date of Hand Delivery

Date of Speed Post

Page of affidavit of

Compliance

i.

Regional Director, MCA by Speed Post

29th August, 2022

On 30th August, 2022 by Speed Post delivered on 31st August,

2022

15-16

ii.

Registrar of Companies, West Bengal by Speed Post

29th August, 2022

On 30th August, 2022 by Speed Post delivered on 31st August, 2022

17-18

iii.

Official Liquidator, West Bengal

26th August, 2022

On 30th August, 2022 by Speed Post delivered on 31st August, 2022

19-20

iv.

Reserve Bank of India

29th August, 2022

On 30th August, 2022 by Speed Post delivered on 31st August,

2022

21-22

v.

Income Tax Officer- Ward-4(1), having jurisdiction over the Petitioner Companies

On 29th August, 2022 by Speed Post delivered on 30th August, 2022

23-24

vi.

Income Tax Officer- Ward-5(1), having jurisdiction over the Petitioner Companies

26th August, 2022

On 30th August, 2022 by Speed Post delivered on 31st August, 2022

25-26

vii.

Income Tax Officer- Ward-6(1), having jurisdiction over the Petitioner Companies

26th August, 2022

On 30th August, 2022 by Speed Post delivered on 31st August, 2022

27-28

viii.

Principal Commissioner of Income Tax-2, having jurisdiction over the Petitioner Companies

26th August, 2022

On 30th August, 2022 by Speed Post delivered on 31st August, 2022

29-30

(i) In compliance with the said order dated 23rd August, 2022, the Petitioner(s) have duly served such notices by e-mail and a separate affidavit of service duly affirmed on 08th September, 2022 along with the certificate under Section 65B of the Evidence Act, 1872 in this regard has also been filed by them and accordingly the Petitioners have duly served such notices by e-mail upon: -

Sl. No.

Statutory/ Sectoral Authorities

Date of Service

Page of affidavit

of Service

i.

Registrar of Companies, West

Bengal

30th August, 2022

12

ii.

Regional Director, MCA

30th August, 2022

13

iii.

Official Liquidator, West Bengal

30th August, 2022

14

iv.

Reserve Bank of India

30th August, 2022

15

v.

Income Tax Officer- Ward-5(1),

having jurisdiction over the Petitioner Companies

30th August, 2022

16

vi.

Income Tax Officer- Ward-6(1), having jurisdiction over the Petitioner Companies

30th August, 2022

17

vii.

Principal Commissioner of Income Tax-2, having jurisdiction over the Petitioner Companies

30th August, 2022

18

viii.

Income Tax Officer- Ward-4(1), having jurisdiction over the Petitioner Companies

30th August, 2022

19

(3) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

(4) Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), Official Liquidator, Kolkata have filed their representations before this Tribunal.

(5) The Official Liquidator has filed his report dated 09th September, 2022 and concluded as under:-

At Para 8

That the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.

At Para 10

That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

At Para 11

That in view of the submission made above the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstances of the case.

(6)The Regional Director has filed his reply affidavit dated 23rd September, 2022

("RD affidavit") which has been dealt with by the Petitioner(s) by their Joint Affidavit dated 11th November, 2022 ("Rejoinder"). The observations of the RD and responses of the Petitioner(s) are summarized as under: -

Paragraph No 2(a) of RD Affidavit

That it is submitted that as per available record, it appears that no complaint and/ or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are also up-dated in filing their Financial Statement and Annual Returns for the financial year 31/03/2021.

Paragraph No. 5 of Rejoinder

With reference to paragraph 2(a) of the said reply, this is substantially correct that no complaint and/or representation has been received against the proposed Scheme of Amalgamation, from the Registrar of Companies, West Bengal. Further it is submitted that all the petitioner companies have up-dated their filing status and all the statutory returns have been filed with the Registrar of Companies.

Paragraph No 2(b) of RD Affidavit

It is submitted that the Petitioner Transferee Company namely M/s Dadoo Finance & Investment Private Limited is registered with RBI as NBFC Company and RBI by letter No KOL.DOS.RSG.No.S1451/99-06-002/2022-23 dated 02.08.2022 addressed to the Board of Directors of M/s Dadoo Finance & Investment Private Limited (Transferee Company) issued their "No Objection" to the proposed scheme of amalgamation. Further, the RBI also stated in the said letter that the approval (No Objection) is valid for six months from the date of issue of that letter.

Paragraph No. 6 of Rejoinder

With reference to paragraph 2(b) of the said reply,save what are matters of record, it is submitted that the Transferee Company namely M/s. Dadoo Finance & Investment Private Limited (Registration no. B. 05.02109) is registered as a Non-Banking Finance Company with Reserve Bank of India under section 45-IA of The Reserve Bank of India Act, 1934. The Reserve Bank of India vide its letter no. KOL.DOS.RSG.No.S1451/99-06-002/2022-23 dated 02nd August, 2022 addressed to the Board of Directors of M/s. Dadoo Finance & Investment Private Limited (Transferee Company) issued their "No Objection" to the proposed scheme of amalgamation. Further, the RBI also stated in the said letter that the said approval is valid for six months from the date of issue of that letter. Copy of the No Objection received from RBI vide letter dated 02nd August, 2022 is annexed herewith and marked as Annexure A.

Paragraph No 2(c) of RD Affidavit

The Transferor Company, Integrated Life Fiscal Services Private Limited has taken Car Loan which stood at Rs.9,69,041/-. But in respect of the security against the loan the particulars of charge has not been filed with Registrar of Companies under section 77 of the Companies Act 2013. Once merged with the transferee company the Transferor Company would refrain from filing the pending forms as mandated by the statute, since its filing status would cease to be "Active" in the portal resulting in the MCA portal not having the said forms in the public domain. Therefore, the pending forms should first be filed by the said Transferor Company with the Registrar of Companies.

Paragraph No. 7 of Rejoinder

With reference to paragraph 2(c) of the said reply, save what are matters of record, it is submitted that Integrated Life Fiscal Services Private Limited (hereinafter refereed as the Transferor Company No. 3) has taken a loan facility of Rs. 18,00,000 (Rupees Eighteen Lakhs) from HDFC Bank Ltd on 30th July, 2018 for the purpose of meeting the cost of acquiring a motor vehicle. To secure the repayment of the loan amount a hypothecation was created in favor the Bank against the said vehicle. The said arrangement did not involve creation of any instrument of charge and the bank did not declare themselves, as the charge holder. The arrangement was guided by a mere Composite Agreement. In view of the above, the form CHG-1 was not filed. The

Transferor Company No. 3 unintentionally failed to file the e-form CHG-1 with the Registrar of Companies (ROC).

The said loan was repaid by the Transferor Company No. 3 on 28th October, 2022.

Thereafter, HDFC Bank Ltd. issued a No Objection Certificate (NOC) dated 01st

November, 2022 to the Transferor Company No. 3. HDFC Bank Ltd. vide the said

NOC removed the hypothecation on the vehicle.

Presently, the e-form CHG-1 has been shifted to the new filing portal of MCA i.e., V3 Filing Portal. The Transferor Company No. 3 tried filing the e-form CHG-1, however the system did not allow the company to file the same, as the present system does not allow filing of e-form CHG-1 beyond 120 days from the date of creation of charge. The Transferor Company No. 3 is prohibited by the MCA portal in filing the e-form CHG-1.

I humbly submit, that on the approval of the Scheme of Amalgamation none of the stakeholders' interest, will be adversely affected. I further submit that the Transferee Company i.e., Dadoo Finance & Investments Private Limited, will comply with all the necessary compliance as required by law, if any, in this regard.

Paragraph No 2(d) of RD Affidavit

The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Paragraph No. 8 of Rejoinder

With reference to paragraph 2(d) of the said reply, save what are matters of record, it is submitted that the list of Assets, to be transferred from the Transferor Companies to the Transferee Company, pursuant to the approval of the Scheme of Amalgamation, is attached herewith and marked as Annexure B.

Paragraph No 2(e) of RD Affidavit

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act ,2013 through appropriate affirmation.

Paragraph No. 9 of Rejoinder

With reference to paragraph 2(e) of the said reply, save what are matters of record, it is submitted that, the Transferee Company undertakes that it shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorized Share Capital(s) of all the Transferor Company(ies) with the Authorized Share Capital of the Transferee Company in post-amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC – 28.

Paragraph No 2(f) of RD Affidavit

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No. 10 of Rejoinder

With reference to paragraph 2(f) of the said reply, save what matters of record, it is submitted that the Transferee company undertakes to pay the applicable stamp duty on the transfer of the immovable properties, if any, from the Transferor Companies to Transferee Company, as applicable.

Paragraph No 2(g) of RD Affidavit

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. 11 of Rejoinder

With reference to paragraph 2(g) of the said reply, save what are matters of record, we state and confirm that there is no discrepancy or change to the said Scheme of Amalgamation enclosed to Company Application and Company Petition and the Scheme annexed to the Company Application and Company Petition are one and same. Copy of the Scheme attached with Company Application and Company Petition are attached herewith and marked as Annexure C1 and C2 respectively.

Paragraph No 2(h) of RD Affidavit

It is submitted that the Income Tax Department vide letter No. Wd (6(1)/Kol./ Amalgamation/2022-23/111 dated 01.09.2022 stated that the outstanding demand of Rs.34,61,904/- is pending against the Transferee Company M/s Dadoo Finance & Investments Private Limited. Hence, the Income Tax Department has objection to the proposed scheme of Amalgamation.

Paragraph No. 12 of Rejoinder

12. With reference to paragraph 2(h) of the said reply, save what are matters of record, we state that the Income Tax Department Vide letter no. WD-6(1)/Kol./ Amalgamation/2022-23/111 dated 01.09.2022 stated that the outstanding demand of Rs. 34,61,904/- is pending against the Transferee Company, M/s. Dadoo Finance & Investments Private Limited. In this regard, we state that the demand is erroneous and infructuous as the Company had opted for Direct Tax Vivad se Vishwas (DTVSV) Scheme. Subsequent to the receipt of the said affidavit furnished by the Ld. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the matter was taken up with the Income Tax Department. The Company vide letter dated 24th September, 2022 requested the Income Tax Officer to pass an order under section 5(2) of the Vivad Se Vishwas Act, 2020 so that the afore-said outstanding demand of Rs.34,61,904/- appearing in the Income Tax portal gets vacated. Copy of the letter dated 24th September, 2022 is attached herewith and marked as Annexure D. Thereafter the Income Tax Officer Ward-6(1), passed an order dated 26th September, 2022 wherein it was stated that there was Nil tax payable by the Company. The copy of the said order is annexed herewith and marked as Annexure E. Moreover, on the approval of the Scheme of Amalgamation the status of the M/s. Dadoo Finance & Investments Private Limited, Transferee Company, shall remain unaffected.

(7) Heard submissions made by the Ld. Authorised Representative appearing for the Petitioner and the Joint Director on behalf of the Regional Director (Eastern region), Kolkata. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -

(a) The Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal with the Appointed Date as 01st April, 2021 (Appointed Date) and shall be binding on “Transferor Companies” and “Transferee Company”, their respective shareholders and creditors and all concerned;

(b) All the property, rights and powers of the “Transferor Companies”, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the “Transferee Company” and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vested in Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

(c) All the debts, liabilities, duties and obligations of the "Transferor Companies" be transferred from the said Appointed Date, without further act or deed to "Transferee Company" and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

(d) The employees of the "Transferor Companies" shall be engaged by the "Transferee Company", as provided in the Scheme;

(e) All proceedings and/or suits and/or appeals now pending by or against the "Transferor Companies" be continued by or against the "Transferee Company", as provided in the Scheme;

(f) In case of any default including any Provisions of Income Tax Act in respect of the Transferor Companies; the Income Tax Department, the ROC, West Bengal; Reserve Bank of India and all other Statutory Department shall be at liberty to initiate appropriate proceeding against the Transferee Company, which after the sanction of the scheme by this Tribunal is in any case responsible for the liabilities/ non-compliance of the Transferor Companies also.

(g) Dadoo Finance & Investments Private Limited ("Transferee Company") do without further application issue and allot to the shareholders of the Dayal Marketing private Limited, Dhankuber Tradecom Private Limited, Integrated Life Fiscal Services Private Limited and Trimudra Real Estates Private Limited, ("Transferor Companies"), the shares in the Dadoo Finance & Investment Private Limited ("Transferee Company") to which they are entitled in terms of the Scheme;

(h) Leave is granted to the Petitioners to file the Schedule of Assets and liabilities of the "Transferor Companies" in the form as prescribed in the Schedule to form No.CAA 7 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 to be filed within three weeks from the date of receiving a copy of this order;

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

(j) "Transferor Companies" and "Transferee Company" shall each within thirty days after the date of receipt of this Order, cause certified copy thereof to be delivered to the Registrar of Companies for the registration and on such certified copies being so delivered, the Dayal Marketing Private Limited, Dhankuber Tradecom Private Limited, Integrated Life Fiscal Services Private Limited and Trimudra Real Estates Private Limited, ("Transferor Companies") shall be dissolved without winding up with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the

Registrar of Companies shall place all documents relating to the “Transferor Companies” and registered with him on the file kept by him in relation to Dadoo Finance & Investment Private Limited (“Transferee Company”) and the files relating to the said companies shall be consolidated accordingly.

8. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

9. Company Petition being C.P. (CAA) No. 109/KB/2022 is disposed of accordingly.

10. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.