(2022) 06 NCLT CK 0020

In the National Company Law Tribunal

Case No : C.P.(CAA) No. 182/ KB / 2021 Connected with C.A.(CAA) No. 93/ KB / 2021

Dayavant Tradelink Private Limited Vs

Date of Decision : 08-06-2022

Acts Referred:

Companies Act, 2013 — Section 133, 206, 206(3), 230(1), 230(6), 232(1), 232(3), 232(3)(i), 232(4)
Reserve Bank of India Act 1934 — Section 45IA
Income Tax Act, 1961 — Section 143(3), 148

Citation : (2022) 06 NCLT CK 0020

Hon'ble Judges : Rajasekhar V.K., Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Shashi Agarwal

Final Decision : Disposed Of

Judgement

Rajasekhar V.K., Member (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 Dayavant Tradelink Private Limited, being the Petitioner No. 1 abovenamed ("Transferor Company No. 1" or “Petitioner No. 1”), Nandlal Suppliers Private Limited, being the Petitioner No. 2 abovenamed ("Transferor Company No. 2" or “Petitioner No. 2”), James Vincom Private Limited being the Petitioner No. 3 abovenamed ("Transferor Company No. 3" or “Petitioner No. 3”) with Anugrah Apex Finance Private Limited being the Petitioner No. 4 abovenamed ("Transferee Company" or “Petitioner No. 4”) whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st April, 2020 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

2. The Petition has now come up for final hearing. Ld. Authorized Representative for the Petitioner submits as follows: -

(a) The Scheme was approved unanimously by the respective Board of Directors of both the Petitioner Companies at their meetings held on 03rd December, 2020 respectively.

(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, since all the Companies are situated in West Bengal, i.e., a single state.

(c) The Statutory Auditors of all the Petitioner Companies have by their certificates dated 14th December, 2020, 16th December, 2020 and 29th January, 2021 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

(d) 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.

(e)The shares of both the Petitioner Companies are not listed.

(f) By an order dated 11th August, 2021 in Company Application (CAA) No.93/ KB/ 2021, 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 Unsecured Creditors of the Applicant No. 1, Applicant No. 2, Applicant No. 3 and Applicant No. 4 are dispensed-with under Section 230(1) read with Section 232(1) of the Act.

(g) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 30th November, 2021 the instant petition was admitted by this Tribunal and fixed for hearing on 24th January, 2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated-30th November, 2021, the Petitioner(s) have duly served such notices on the Regional Director, Eastern Region (Ministry of Corporate Affairs), Kolkata; Registrar of Companies, West Bengal; Official Liquidator, West Bengal, Income Tax officers, having jurisdiction over petitioners Companies on 23rd December, 2021 & 27th December, 2021 through hand delivery; Reserve Bank of India, West Bengal on 24th December, 2021 through hand delivery. The Petitioner (s) have also published such advertisements once each in the "Financial Express" in English and "Aajkaal" in Bengali, in their respective issues dated 23rd December, 2021. An affidavit of compliance in this regard has also been filed by the petitioners on 19th January, 2022.

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 17th February, 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.

6. The RD has filed his reply affidavit dated 23rd May, 2022 ("RD affidavit") which has been dealt with by the Petitioner(s) by their Joint Affidavit dated 26th May, 2022 ("Rejoinder"). The observations of the RD and responses of the Petitioner(s) are summarized as under: -

a. Paragraph No 2(a) of RD Affidavit: That it is submitted that the Registrar of Companies, West Bengal by its report dated 18/10/2021 has reported that Inquiry under section 206 of the companies Act, 2013 is pending against the Transferor Companies namely Dayavant Tradelink Private Limited, Nandlal Suppliers Private Limited and James Vincom Private limited. Copy of the said report of ROC, WB marked as Annexure-I is enclosed herewith for perusal and ready reference.

Paragraph No. 5 of Rejoinder: With reference to paragraph 2(a) of the said reply, save what matters for records, it is humbly submitted that the Transferor Companies, M/s. Dayavant Tradelink Pvt Ltd, M/s. Nandlal Suppliers Pvt Ltd and M/s. James Vincom Pvt Ltd, had received an inquiry Notice under Section 206 of the Companies Act, 2013 in the year 2017. The Transferor Companies have duly replied to the observations raised by the Registrar of Companies and provided necessary documents. However, none of the Transferor Companies have received any further communication from the Registrar of Companies in the said matter. Further the Transferee Company undertakes to make necessary submission against any further query/ observation, on behalf of all the Transferor Companies, in case they are raised in future, by the Registrar of Companies. I humbly submit that all the petitioner companies have up-dated their filing status, and all the statutory returns have been filed with the Registrar of Companies.

b. Paragraph No 2(b) of RD Affidavit: It is submitted that this deponent has received email on 29/10/2021 along with few pages of attachments and thereafter on 28/12/2021, 24/01/2022, 29/01/2022, 15/02/2022, 22/02/2022 and 01/03/2022 from Shri Shiv Chandra Mishra of Kolkata wherein he has made some observations/views and other non-compliances of the Companies Act, 1956/ Companies Act, 20 13 on Balance Sheet Financial Statements of James Vincom Private Limited, a Transferor Company in the proposed Scheme. However, he has not stated in the said mail/observation how he is interested/involved in the proposed Scheme. On receipt of the said observations/views, this Deponent, by letters dated 29/10/2021 followed by reminders on 24/12/2021, 03/20/2021 and 02/03/2022 has already taken up the matter with Registrar of Companies, West Bengal for his examination and for submission of his representation /report in the matter, which is awaited.

Paragraph No. 6 of Rejoinder: With reference to paragraph 2(b) of the said reply, save what are matters of record, it is humbly submitted that, it is substantially correct that M/s. James Vincom Pvt Ltd, had received e-mails from Shri Shiv Chandra Mishra. Shri Shiv Chandra Mishra is neither the shareholder nor the creditor of the Transferor Company. I respectfully submit that the complaint of Shri Shiv Chandra Mishra, did not appear to be related to the amalgamation matter of the company, presently pending before this Hon’ble Tribunal. Following such e-mails from Shri Shiv Chandra Mishra, M/s. James Vincom Private Limited, had received a notice No. ROC/Kol/IPC/Miss. Amalgamation/140273/632 dated 24th January, 2022 under section 206(1) of the Companies Act, 2013, from the Registrar of Companies, Kolkata to provide information/ explanation in respect of the said complaints of Shri Shiv Chandra Mishra and thereafter a notice no. ROC/ Kol/IPC/140273/1164 dated 8th February, 2022, under section 206(3) of the Companies Act, 2013 directing the M/s. James Vincom Private Limited to produce in person relevant documents for inspection. In compliance to the said notices of the Registrar of Companies, Kolkata, M/s. James Vincom Private Limited duly filed their written submission and personally appeared before the Registrar of Companies, Kolkata.

The principal complaint of Shri Shiv Chandra Mishra was that M/s. James Vincom Private Limited was carrying out Non-Banking Financial Company (NBFC) activity without being registered with the Reserve Bank of India (RBI). It was duly explained to the Registrar of Companies, that the Transferor Company was not carrying out any NBFC activity in violation of the provision of RBI Act. The Transferee Company, M/s. Anugrah Apex Finance Private Limited is a registered NBFC carrying on the business of Non-banking finance Company and the Reserve Bank of India has provided a No-Objection certificate dated 29th March, 2022 Ref. KOL.DOS.RSG.No.1450/99-06-002/2021-2022 on the proposed Scheme of Amalgamation between M/s. Dayavant Tradelink Private Limited, M/s. Nandlal Suppliers Private Limited, M/s. James Vincom Private Limited Private Limited with M/s. Anugrah Apex Finance Private Limited.

c. Paragraph No 2(c) of RD Affidavit: The Transferor companies, James Vincom Private Limited is a Non-Banking Financial Company. Its financial statement as at 31.03.2021 exhibit that more than 50% of its total assets were financial assets and more than 50% of its income was financial income as follows:-

Total Assets

(Rs.)

Financial Assets

(Rs.)

Total Income (Rs.)

Financial Income

(Rs.)

20,81,15186/-

20,56,86,728/-

(Non-Current

Investments and

Current Investments)

4,77,174/-

3,84,342/-

(Profit on sale of

Current Investments

and Dividend

Income)

Therefore, the company is an NBFC, but apparently functioning without Registration Certificate from the Reserve Bank of India under section 451A of the Reserve Bank of India Act 1934, as it appears. NOC from Reserve Bank of India shall of relevance for the merger of the said Transferor companies.

Paragraph No. 7 of Rejoinder: With reference to paragraph 2(c) of the said reply, save what are matters of record, it is humbly submitted that, M/s. James Vincom Private Limited is a Core Investment Company and further classified as Non-Systemically Important CIC (NSI).

Non-Systemically Important CIC (NSI) is a non-deposit taking CIC which has an asset size of less than Rs. 100 Crore according to the last audited balance sheet. As per circular Notification No. DNBS (PD) 220/CGM(US)-2011 dated 5th January, 2011, the CICs that have an asset size of below Rs 100 crore does not need NBFC registration. Such regulation specifically exempt companies like M/s. James Vincom Private Limited from the registration requirements. Copy of the said circular is annexed herewith and marked as Annexure A. The Company has only made investment in one of it's group company and is not carrying out any other NBFC activity. The company has not given any loans and advances nor traded in the equity shares. Only the surplus funds of the company are deployed in debt mutual funds which are realisable at short notice and are extremely liquid. I reiterate that the Transferee Company, M/s. Anugrah Apex Finance Private Limited is a registered NBFC and an application was made to the Reserve Bank of India to provide a No-Objection certificate against the proposed Scheme of Amalgamation between M/s. Dayavant Tradelink Private Limited, M/s. Nandlal Suppliers Private Limited, M/s. James Vincom Private Limited Private Limited with M/s. Anugrah Apex Finance Private Limited. Reserve Bank of India vide No-Objection Certificate dated 29th March, 2022 Ref. KOL.DOS.RSG. No.1450/99-06-002/2021-2022 had provided it's no-objection to the proposed Scheme.

d. Paragraph No 2(d) of RD Affidavit: Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act,2013 through appropriate affirmation.

Paragraph No. 8 of Rejoinder: With reference to paragraph 2(d) of the said reply, save what are matter of record, it is submitted that, 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 the Transferor Company 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.

e. Paragraph No 2(e) 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. 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 to pay the applicable stamp duty on the transfer of the immovable properties, if any, from the Transferor Company to Transferee Company as applicable.

f. Paragraph No 2(f) 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. 10 of Rejoinder: With reference to paragraph 2(f) 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 B1 and B2 respectively.

g. Paragraph No 2(g) of RD Affidavit: It is submitted that the Petitioner Transferee Company namely M/s Anugrah Apex Finance Private Limited is registered with RBI as NBFC Companies and the RBI by letter No. KOI.DOS.RSG. No. 1450/99.06.002/2020-21 dated 29.03.2022 addressed by the Board of Directors of M/s. Anugrah Apex Finance Private Limited (Transferee Company) issued their "No Objection" to the proposed scheme of amalgamation. However, the RBI stated that the said approval (No Objection) is valid for six months from the date of issue of that letter. A copy of the said letter of RBI marked as Annexure-II is annexed herewith for kind perusal and ready reference.

Paragraph No. 11 of Rejoinder: With reference to paragraph 2(g) of the said reply, save what are matters of record, it is respectfully submitted that the Reserve Bank of India had provided it’s No- Objection Certificate to the proposed Scheme of Amalgamation vide No-Objection Certificate dated 29th March, 2022 Ref. KOL.DOS.RSG.No.1450/99-06-002/2021-2022.

h. Paragraph No 2(h) of RD Affidavit: It is submitted that the Income Tax Department vide its letter dated 25/08/2021 stated that a re-assessment proceeding u/s 147 of the 1.T. Act, 1961 for the A.Y. 2014-15 is pending against the assesse company i.e. James Vincom Private Limited which has been raised during the financial year 2021-22. Further, since the proceeding is pending against the assesse company, hence the Income Tax Department has put its objection over the assesse company in the said amalgamation matter. Copy of the said letter of Income Tax Department marked as Annexure-III is enclosed herewith for perusal and ready reference.

Paragraph No. 12 of Rejoinder: With reference to paragraph 2(h) of the said reply, save what are matters of record, we state that the Income Tax Department had issued Notice under section 148 of the Income Tax Act, 1961 dated 26th June, 2021 to M/s. James Vincome Pvt Ltd. Following the receipt of the said Notice we have vide letter dated 13th July, 2021 duly made our submission. Thereafter another Notice was issued to M/s. James Vincome Pvt Ltd dated 28th November, 2021 under section 142 of the Income Tax Act, 1961 wherein M/s.

James Vincome Pvt Ltd, was called upon to produce the accounts and necessary documents. In this regard, necessary submission was duly filed by M/s. James Vincome Pvt Ltd. Copy of the said Notice and reply is annexed herewith and marked as Annexure C. Presently, the assessment is pending. Further please note that was an assessment under section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2017-18, which was eventually closed by the Department. I humbly state that the we are confident that on the conclusion of the assessment there won't be any outstanding demand against M/s. James Vincom Private Limited. However, in any adverse assessment, the Concerned Income Tax Department is free to proceed in accordance with law against the Transferee Company. The Transferee Company undertakes to comply with all necessary requirement, if any in this regard.

7. Heard submissions made by the Ld. Authorized Representative appearing for the Petitioner and RD (ER), 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 is hereby sanctioned by this Tribunal with the Appointed Date as 1st April, 2020, and shall be binding on the "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 vest in the Transferee Company for all the estate and interest of the Transferor Company 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, 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) Anugrah Apex Finance Private Limited ("Transferee Company") do without further application issue and allot to the shareholders of the Dayavant Tradelink Private Limited, Nandlal Suppliers Private Limited, James Vincom Private Limited, ("Transferor Companies"), the shares in the Anugrah Apex Finance Private Limited ("Transferee Company") to which they are entitled in terms of the Scheme;

g) The Schedule of Assets and liabilities of the "Transferor Companies" to be filed within three weeks from the date of receiving a copy of this order;

h) "Transferor Companies" and the "Transferee Company" shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Dayavant Tradelink Private Limited, Nandlal Suppliers Private Limited, James Vincom 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 Anugrah Apex Finance 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. 182/KB/2021 is disposed of accordingly.

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