(2020) 12 NCLT CK 0137

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 1077/MB-IV Of 2020

De Investments Private Limited And Ors. Vs

Date of Decision : 02-12-2020

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

Citation : (2020) 12 NCLT CK 0137

Hon'ble Judges : Suchitra Kanuparthi, J;Rajesh Sharma, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi

Judgement

1. The Bench is convened by videoconference today.

2. The Counsel for the Applicants states that the present Composite Scheme of Amalgamation and Arrangement between De Investments Private

Limited (â??the Transferor Companyâ??) AND RST India Private Limited (â??the Transferee Companyâ?? or â??the Demerged Companyâ??)

AND De Agrilogics Private Limited (â??the Resulting Companyâ??) AND their re- spective Shareholders(â??Schemeâ?? or â??the Schemeâ??),

under the provisions of Sections 230 to 232 of the Companies Act, 2013. This Scheme in- volves:

a. Amalgamation of De Investments Private Limited (â??Transferor Companyâ?) with RST India Private Limited (â??Transferee Com- panyâ? or

â??Demerged Companyâ??) with Appointed Date of April 1, 2020; and

b. Demerger and vesting of the Demerged Undertaking of RST India Private Limited (â??Transferee Companyâ? or â??Demerged Companyâ?)

into â??De Agrilogics Private Limited (â??Resulting Companyâ??) with Appointed Date of August 1, 2020..

3. Counsel for the Applicant Companies states that the Scheme has been approved by the Board of Directors of the First Applicant Company, the

Second Applicant Company and Third Applicant Company in their re- spective meetings held on 14 August 2020.The copy of the resolutions is

attached as Annexure â?" â??D1â?? to â??D3â?? to Company Application

4. The Counsel for the Applicants further submits the Introduction and Rationale for the Scheme of Amalgamation: -

De Investments Private Limited

The First Applicant Company is merely a holding company of Second Applicant Com- pany;

RST India Private Limited

The Second Applicant Company is engaged in two business activities namely:

a) Providing premises facility & management services; and

b) Agricultural Business

De Agrilogics Private Limited

The Third Applicant Company is primarily incorporated to be engaged in the agricul- ture, horticulture and related activities.

Rationale of the Scheme:

The proposed restructuring would:

â?¢ Result in simplification of the group structure by eliminating cross holdings;

â?¢ Elimination of multilayer entities within the group;

â?¢ Reducing the multiplicity of legal and regulatory compliances required at present;

â?¢ Eliminating duplicative communication and coordination efforts across mul- tiple entities;

â?¢ Rationalizing costs by eliminating multiple record keeping and administrative functions;

â?¢ Reducing time and efforts for consolidation of financials at the group level.

Rationale for demerger and vesting of Demerged Undertaking of Demerged Company into the Resulting Company:

It is envisaged that the proposed demerger will facilitate value enhancement and value unlocking of the both businesses and allow focused

growth strategy, including creation of structure for potential strategic partnership for each business, which would be in the best interests of

the stakeholders

5. The Counsel further clarifies that the Scheme is within the group com- panies whose ultimate beneficial owners are the same and is in the in- terest

of the shareholders, creditors, employees and other stakeholders of the Applicant Companies. Further, there is no likelihood that any creditor of either

the Transferor Company or the Transferee Company or the Resulting Company will be prejudiced as a result of the Scheme. It is hereby clarified that

the intended Scheme is only for the merger of the Transferor Company into the Transferee Company and demerger of the Demerged Undertaking

into the Resulting Company and is not an arrangement with their respective creditors. The proposed Scheme will neither impose any additional burden

nor adversely affect the interests of any class of shareholders and/ or creditors of either the Transferor Companies or the Transferee Company.

6. That the meeting of the Equity Shareholders of the First Applicant Company be dispensed in support of Company Application, inter-alia stating

therein that there are 2 (Two) Equity Shareholders in the First Applicant Company and that the First Applicant Company having pro- cured the written

consent affidavits from both the Two (2) Equity Shareholders in the First Applicant Company which are annexed as Annexure â?" â??H1â?? and

â??H2â?? to the Company Application. In view of the fact that the shareholders of the First Applicant Company have given their consent affidavits

the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

7. That the meeting of the Equity Shareholders of the Second Applicant Company be dispensed in support of Company Application, inter-alia stating

therein that there are 3 (Three) Equity Shareholders in the Second Applicant Company and that the Second Applicant Company having procured the

written consent affidavits from all the Three (3) Equity Shareholders in the Second Applicant Company which are an- nexed as Annexure â?

â??K1â?? to â??K3â?? to the Company Application. In view of the fact that the shareholders of the Second Applicant Company have given their

consent affidavits the meeting of the Equity Sharehold- ers of the Second Applicant Company is hereby dispensed with.

8. That the meeting of the Equity Shareholders of the Third Applicant Company

be dispensed in support of Company Application, inter-alia stating

therein that there are 2 (Two) Equity Shareholders in the Third Applicant Company and that the Second Applicant Company having procured the

written consent affidavits from both the Two (2) Equity Shareholders in the Third Applicant Company which are annexed as Annexure â?

â??N1â?? andâ??N2â?? to the Company Application. In view of the fact that the shareholders of the Third Applicant Company have given their

consent affidavits the meeting of the Equity Shareholders of the Third Applicant Company is hereby dispensed with.

9. There are no Secured Creditors in the First, Second and Third Appli- cant Company, therefore issue of notices to them does not arise.

10. That the meeting of the Unsecured Creditors of the First Applicant Company is dispensed in support of Company Application, inter-alia stating

therein that there are 3 (Three) Unsecured Creditors in the First Applicant Company and that the First Applicant Company having pro- cured the

written consent affidavits from all the Three (3) Unsecured Creditors comprising of 100% of the total value of Unsecured Creditors in the First

Applicant Company which are annexed as Annexure â?" â??Q1â?? to â??Q3â?? to the Company Application. In view of the above, holding and

convening the meeting of Unsecured Creditors of the First Applicant Company is hereby dispensed with.

11. That the meeting of the Unsecured Creditors of the Second Applicant Company is dispensed in support of Company Application, inter-alia stating

therein that there are 4 (Four) Unsecured Creditors in the Second Applicant Company and that the Second Applicant Company having procured the

written consent affidavits from Three (3) Unse- cured Creditors comprising of 94.5% of the total value of Unsecured Creditors in the Second

Applicant Company which are annexed as An- nexure â?" â??T1â?? to â??T3â?? to the Company Application. In view of the above, holding and

convening the meeting of Unsecured Creditors of the Second Applicant Company is hereby dispensed with.

12. There are no Unsecured Creditors in the Third Applicant Company, therefore, conveying meeting and issue of notices to them does not arise.

13. The First Applicant Company is also directed to serve notice upon Offi- cial Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and

as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Mr. Sandeep Jawaharlal

Singhal, Email: sandeepjsinghal@hotmail.com, as Char- tered Accountants, to assist the Official Liquidator to scrutinize the books of accounts of the

said Transferor Company for the last 5 years and submit its representation / report to the Tribunal. The aforesaid Company to pay fees of Rs. 25,000/-

for this purpose. If no representa- tion / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the

date of receipt of such notice, it will be presumed that Official Liquidator has no representa- tion / objection to the proposed Scheme as per Rule 8 of

the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

14. 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 Companyâ??s assessments are made i.e. for the First Applicant Company, Ward â?" 2(1)(2), Mumbai, having PAN

No. AAACD2056Q, for the Second Applicant Company, Ward â?" 2(3)(1), Mumbai, having PAN No. AAACR1838C and for the Third Applicant

Company, Ward â?" 2(1)(2), Mumbai, having PAN No. AAHCD8544J, (ii) the Central Government through the office of Re- gional Director,

Western Region, Mumbai, (iii) Registrar of Compa- nies, Mumbai and any other applicable regulatory authority pursuant to Section 230(5) of the

Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they

may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such

representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no

representations to make on the pro- posals.

15. The Applicant Companies to file affidavit of service of the directions given by the Tribunal in the Registry for service of notice to the regula- tory

authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

16. Ordered accordingly.