(2021) 02 NCLT CK 0127

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 1016/MB Of 2020 In Company Application (CAA) No. 751/MB-II Of 2020

Dhanpriya Textiles Private Limited APPELLANT

Vs

Beetee Textile Industries Limited RESPONDENT

Date of Decision : 08-02-2021

Acts Referred:
Companies Act, 2013 — Section 13, 14, 61, 230, 230(1), 230(3), 230(4), 230(5), 230(6), 231, 232, 232(6), 232(3)(i)

Citation : (2021) 02 NCLT CK 0127

Hon'ble Judges : H.P Chaturvedi, J;Ravikumar Duraisamy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi, Rupa Sutar

Final Decision : Disposed Of

Judgement

1. The Court is convened by videoconference today 08.02.2021.

2. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.

3. The Counsel for the Petitioner Companies states that the present Scheme is an Amalgamation of Dhanpriya Textiles Private Limited ('the First Petitioner Company' or 'the First Transferor Company') and Beetee Textile Industries Limited ('the Second Petitioner Company' or 'the Trans- feree Company') and their respective Shareholders.

4. The Petitioner Companies further submits that the consolidation of the business operations inter alia will result in the following benefits: -

The Amalgamation of Dhanpriya Textiles Private Limited and Beetee Textile Industries Limited will result in various benefits including:

i. The amalgamation of Dhanpriya with Beetee would result in significant efficiencies, including reduction of overheads, administrative, manage- rial and other expenditure and optimal utilization of various resources;

ii. The amalgamation will bring about simplicity in work, reduce various statutory and regulatory compliances and related costs, which presently have to be duplicated in different entities, reduction in operational and administrative expenses and overheads, and better cost and operational efficiencies;

iii. It would be advantageous to combine the activities and operations of the Transferor Company and Transferee Company into a single company for synergistic linkages and the benefit of combined financial resources;

iv. Greater efficiency in cash management and unfettered access to cash flow generated by the combined business which can be deployed more effi- ciently to maximize shareholder's value.

5. Petitioner Companies submits that the Board of Directors of the Peti- tioner Companies in their meeting on 3rd January 2020 have approved the Scheme by passing Board Resolutions in their respective meetings.

6. The Learned Counsel for the Petitioner Companies submits that the Company Scheme Petition is filed in consonance with Sections 230 to 232 of the Companies Act, 2013 along with the Orders passed in C.A (C.A.A.)/751/MB-II/2020 by this Tribunal.

7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all require- ments as per directions of the Tribunal and they have filed necessary compliance reports in lieu of affidavits with the Tribunal. The Peti- tioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. Such undertakings given by the Petitioner Companies are accepted.

8. In the present matter the Regional Director also filed a Report dated 31 August 2020 stating therein, save and except as stated in paragraph IV (a) to (g), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV, of the said Report it is stated that:

a) In addition to compliance of AS-14 (IND AS-103) the Transferee Com- pany shall pass such accounting entries which are necessary in connec- tion with the scheme to comply with other applicable Accounting Stand- ards such as AS-5(IND AS-8) etc;

b) As per the Definitions clause 1.3 of the Scheme "Appointed Date" means 1st April 2019 or such other date as may be directed by the Tribunal; "Effective Date" or "Coming into effect of this Scheme" or "upon the Scheme being effective" means the last of dates on which all the condi- tions and matters referred to in clause 17 of the Scheme occur or have been fulfilled, obtained or waived, as applicable, in accordance of the Scheme.

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tri- bunal taking into account its inherent powers.

Further, the petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

c) The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Sec- tion 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

d) Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its au- thorised capital subsequent to the amalgamation and therefore, petition- ers to affirm that they comply the provisions of the section.

e) This tribunal may direct the petitioners to file an affidavit to this effect that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/in the pro- posed scheme, for in Case any further changes to be made if any, then liberty be given to Central Government to file further report if any re- quired;

f) The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon 'ble 'Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Au- thorities is binding on the petitioner company(s).

g) As regards, Part-II Clause 14(14.1 to 14.3) of the Scheme (Merger of Au- thorized Share Capital of the Transferor Company) Upon the Scheme becoming effective, the Clause V of Memorandum of Association and Clause(2) of Article of Association of the 'Transferee Company relating to the Authorised Share Capital. In this regard it is submitted that Hon'ble Tribunal may kindly direct the petitioner to comply with provi- sions of section 13, Section 14 & Section 61 of the Companies Act, 2013 and to and other applicable provisions of the Act.

9. In response to the observations of the Regional Director, the Transferee Company filed a reply affidavit dated 12th January 2021,before this tri- bunal wherein it made suitable reply and clarification and by giving undertakings to

each of the observations of the Regional Director, which are described as under:

The responses of the Second Petitioner Company herein, to each of the aforesaid observations are as under:

(a) Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned the Sec- ond Petitioner Company/Transferee Company undertakes that in addi- tion to compliance of AS-14 (IND -AS -103) the Second Petitioner Com- pany/Transferee Company will pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), to the extent applica- ble.

(b) Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned the Sec- ond Petitioner Company/Transferee Company confirms and undertakes that the Appointed Date has been fixed as 1 April 2019 which is in com- pliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall be deemed to be effective from such Appointed Date. Thus, Peti- tioner Companies will be complying with requirements clarified vide cir- cular No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

(c) Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, it is stated that the meeting of the shareholders and unsecured creditors of the First Petitioner Company and meeting of the shareholders of Second Pe- titioner Company were dispensed with in view of the affidavits of consent obtained from all the shareholders as well as the unsecured creditors of the First Petitioner Company and shareholders of Second Petitioner Company respectively vide order dated 24th April 2020 passed by this Tribunal in C.A.(C.A.A.)/751/MB/ 2020. There were no Secured Creditors in the First and Second Petitioner Company and no Unsecured Creditors in the Second Petitioner Company.

(d) Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Second Petitioner Company/Transferee Company undertake that the setting off of fees paid by the Transferor Companies on its Authorised Share Capital shall be in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013.

(e) Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, the Second Petitioner Company/Transferee Company undertake and con- firm that the Scheme enclosed to Company Application and Company Petition, are one and the same and there is no discrepancy/ any change/ changes are made.

(f) Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned, the Pe- titioner Companies confirm that as per the provisions of section 230(5) of the Companies Act, 2013 have served the notices to the concerned author- ities which are likely to be affected by the Amalgamation i.e Regional Director, Registrar of Companies, concerned Income Tax Department and Official Liquidator in so far as Transferor Company is concerned.

(g) Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (g) of his report is concerned, the Second Petitioner Company/Transferee Company confirm that upon the scheme becoming effective, the Clause V of the Memorandum of Associ- ation and Clause (2) of Articles Of Association of the Transferee Com- pany relating to the Authorised Share Capital, shall comply with the provisions of section 13, section 14 & section 61 of the Companies Act, 2013 by requisite forms.

10. By considering the above stated reply made undertaking given the ob- servations made by Regional Director are explained well and stands satisfied by the Petitioner Companies in the above Para 9. Therefor clarifications made and undertaking given by the Petitioner Companies in Paras 9(a) to 9(g) are hereby accepted by this Tribunal. That apart, the Petitioner Companies have also undertaken to comply with all stat- utory requirements as may be required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.

11. In the present matter the Official Liquidator dully filed his report dated 8th October 2020 inter alia stating therein that the affairs of the Trans- feror Companies were conducted in a proper manner.

12. Having heard Mr. Hemant Sethi the Ld. Counsel for the company Pe- titioners by perusing the material available on record. The proposed company Scheme seems to be Bonafide and reasonable and is not vio- lative of any provisions of law nor it goes contrary to public policy nor it is found detrimental to the interest of shareholders and creditor and public at large.

13. As all the requisite statutory compliances have been fulfilled, the pre- sent Company Petition No. 1016 of 2020 filed by the Petitioner Com- panies deserve to be allowed. Hence the same is allowed in terms of its prayer/relief clause with following direction/observation proposed company scheme of amalgamation between the transferor and trans- feree company namely M/s Dhanpriya Textile Private Limited and M/s Beetee Textile Industries Limited is hereby sanctioned.

14. Both the transferor and transferee company to pay Rs. 25,000 each to the RD, and the Transferor Company to pay Rs. 25,000 to the official Liquidator, High Court of Bombay towards the cost incurred by the Govt. such amount shall be payable within 30 days from the date of receipt of certified copy of this order.

15. The Petitioner Companies shall lodge a copy of this order duly certified by the Deputy/Assistant Registrar of this Tribunal along with Scheme, with the concerned Superintendent of Stamps for the purpose of adju- dication of stamp duty payable, if any, within a period of 60 working days from the date of the

receipt of the Order.

16. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically, in e-form INC-28 within 30 days from the date of receipt of the Order duly certified by the Registry of Tribunal.

17. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal along with a copy of the Scheme.

18. Parties concerned are at liberty to apply further to this Tribunal in the matter for any appropriate directions that may be deemed necessary by this court.

19. With the aforesaid direction the present company petition is allowed and stands disposed of.