(2021) 02 NCLT CK 0041

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application (CAA) No. 14/ND Of 2021

Dharampal Satyapal Sons Pvt. Ltd. APPELLANT

Vs

DS Intellectual Properties Pvt. Ltd. RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:
Companies Act, 2013 — Section 230, 230(5), 231, 232, 234

Citation : (2021) 02 NCLT CK 0041

Hon'ble Judges : P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This petition is filed by way of a 1st Motion under Sections 230-232, Section 234 of the Companies Act, 2013 (hereinafter referred to as the Act')

by the Applicant/Demerged Company No.1 in connection with the Scheme of Demerger (hereinafter referred to as the Scheme') for merging its

business with M/s DS Intellectual Properties Private Limited (Resulting Company).

2. As per averments, the registered office of the Demerged and Resulting Companies are situated in the National Capital Territory of Delhi, falling

within the territorial jurisdiction of this Court.

3. The Applicant/ Demerged Company No.1 was incorporated under the Act on 07.01.2004 under the name and style of â??Dharampal Satyapal

Sons Private Limitedâ? having CIN U16008 DL2004 PTC123917. Its present authorized share capital Rs. 8,00,00,000/- while its issued, subscribed

and paidup capital is 6,00,00,000/-.

The main object of the Demerged Company is that it owns many prestigious brands like DS Group, Tulsi, Catch etc some of which are licensed to other companies in lieu of royalty income and remaining are retained by Demerged Company as part of IPR Business.

4. The Resulting Company was incorporated under the Act on 04.03.2020 under the name and style of â??DS Intellectual Properties Private

Limitedâ? having CIN U74999 DL2020 PTC36259. Its present authorized share capital Rs. 15,00,000/- divided into 1,50,000 equity shares of Rs. 10/-

each while its issued, subscribed and paid up capital is 50,000/- divided into 5,000 equity shares of Rs. 10/- each.

The main object of the Resulting company is to carry on the business of intellectual property, including but not limited to acquiring licenses, patents,

patent rights, copy rights, trade marks, designs, formulae, license, concessions and further to initiate, undertake and engage in scientific, developments,

experiments etc for any product and services in India and abroad.

7. Copies of the Memorandum of Association and Articles of Association along with the latest audited Balance Sheet as on 31.03.2020 and report of

the Statutory Auditor of the Demerged and Resulting Companies have been filed.

Provisional balance Sheets upto 30th June, 2020 also been filed.

It has also been certified by the Statutory Auditor of the Applicant/Demerged Company and Resulting Company that the Accounting Treatment is in

compliance with the Accounting Standards prescribed u/ s 133 of the Companies Act 2013.

8. It has been stated on behalf of the Demerged and Resulting Companies that the Scheme of Arrangement is necessitated and justified on grounds

that :-

a. The demerger would enable greater/enhanced focus of management in the IPR business and remaining business of Demerged Company and shall

facilitate the administration to efficiently and independently exploit opportunities for respective business;

b. Would enable the management of Resulting Company to safeguard and maximise the value of IPR Buinsess;

c. Segregating the business would provide for independently business opportunities, attracting different sets of investors, strategic partners, lenders and

other stakeholders and would bring about greater internal control of business processes/ease in decision making;

d. Would create enhanced value for the shareholders and allow a focus strategy in operations in operations which would be best interest of all the

stakeholders ;

e. Would enhance the shareholders value of the applicant companies;

f. The nature of risk, competition and capital intensity involved in IPR business and remaining business of Demerged Company is distinct from each

other. Hence as part of overall business reorganization plan, it is considered desirable and expedient to reorganize and reconstruct Demerged

Company in the manner and on the terms and conditions contained in the Scheme;

The Appointed date of the Scheme is 1st April, 2021.

9. The Board of Directors of the Demerged Company and the Resulting Company vide its meetings held on 27th October, 2020 and 15th September,

2020 has unanimously approved the proposed Scheme of Arrangement. Copies of the board resolutions passed have been filed.

10. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of

Shares & Share Exchange Ratio dated 26th October, 2020, issued by Ms. Shweta Singh, Chartered Accountant and the Registered Valuer in respect

of Securities or Financial Assets, registered with IBBI as per the settled principles of valuation. The ratio is as fallows:

A. For every 1 equity shares of Class A of face value of Rs. 10/- each held in the Demerged Company, as on the Record Date, 1 equity share of face

value of Rs.10/-each fully paid up of the Resulting Company;

B. For every 1 equity shares of Class B of face value of Rs. 10/- each held in the Demerged Company, as on the Record Date, every 1 equity share

of face value of Rs.10/-each fully paid up of the Resulting Company.

10. Vide the present application, a prayer is made for dispensation of convening meetings in view of the following facts:-

A. In respect of the Demerged Company No.1 / Applicant Company No. 1:-

â?¢ It has 8 Equity Shareholders who have accorded their consent vide affidavits placed on record.

â?¢ It has no Secured Creditor as certified by the Chartered Accountant.

â?¢ It has unsecured creditors out of which 1 unsecured creditor valuing 94.35% have accorded their consent vide affidavits placed on record.

In view of the consent accorded by its 8 Shareholders and by its 1 valuing 94.25% unsecured creditor vide affidavits, the requirement of convening the

meeting of the shareholders and unsecured creditor is dispensed with. Further, as there is no secured creditors, the question of convening their meeting

does not arise.

B. In respect of the Resulting Company No.2 / Applicant Company No.2:-

â?¢ It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.

â?¢ It has no Secured or Unsecured creditors as certified by the Chartered Accountant.

In view of the consent accorded by its 2 Shareholders vide affidavits, the requirement of convening the meeting of the shareholders is dispensed with.

Further, as there is no secured or unsecured creditor, the question of convening their meeting does not arise.

11. The proposed Scheme of Arrangement is annexed along with the present application.

12. It is submitted that the proposed arrangement is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the

Scheme if sanctioned by this Tribunal, will take effect from the date of on which certified copy of the order of sanctioning of proposed Scheme,

passed by this Tribunal is filed with the Registrar of Companies.

13. It has also been submitted that there are no proceedings pending inquiry or investigation in respect of the applicant company.

14. While dispensing with the meetings, this Tribunal also directs that notices be sent to the Central Government through the office of the Regional

Director (Northern Region), the Income Tax Authorities, Registrar of Companies, NCT of Delhi & Haryana and other sectoral regulators or

authorities as required under sub- section (5) of section 230 of the Companies Act, 2013 who may have significant bearing on the operation of the

applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with

Companies (Compromises, Arrangement, and Amalgamation) Rules, 2016. Copies of the notices along with the proof of dispatch be filed before this

Tribunal along with the affidavit of compliance.

15. All the aforesaid 'directions are to be complied with strictly in accordance

with the applicable law including forms and formats contained in the

Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicant.

As sequel to the above, the present application stands allowed by dispensing with the meetings of shareholders and creditors of the applicant

companies.