(2020) 05 NCLT CK 0020

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

Case No : Company Petition CAA No. 67(PB) Of 2019, Company Application (CAA) No. 67/PB Of 2019

Digital Classifieds Limited — APPELLANT

Vs

Times Internet Limited And Ors — RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:

Income-Tax Act, 1961 — Section 72(A)
Companies Act, 2013 — Section 3(1), 89, 230, 231, 232

Citation : (2020) 05 NCLT CK 0020

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Tushar Gupta, Abhishek Seth

Final Decision : Allowed

Judgement

Narender Kumar Bhola, Member (T)

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of amalgamation, as contemplated between the companies and its shareholders and creditors by way of amalgamation of the Transferor/Petitioner Company No. 1 with the Transferee/ Petitioner Company, (Petitioner Company 1/Transferor Company) Digital Classifieds Limited, (would he transferred to and vested in Times Internet Limited (for brevity Transferee Company") as going concern on occurrence of the effective date with effect from the appointed date.

2. From the records, it is seen that the First Motion Application filed before this bench, the same was allowed and accordingly was disposed off vide its order dated 15.04.2019 whereby directions for dispensing with the meetings of the shareholders, Secured and Unsecured Creditors was passed.

3. Under the circumstances, the Petitioner Companies filed their joint petition for sanction of the Scheme of Amalgamation before this Tribunal, subsequent to the order of dispensation of the meeting in relation to both the Transferor Company and Transferee Company. On 06.05.2019 this Tribunal ordered Notice in the Second Motion petition moved by the Petitioner Companies in connection with the scheme of amalgamation, to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the Income Tax Department, along with full details of assessing officer and PAN Card numbers of the companies; (d) Official Liquidator and to other sectoral regulators and to such other Objector(s), if any.

4. It is seen from the records that the petitioners, have filed an affidavit of service on 05.07.2019 in relation to the compliance of the order passed by the Tribunal as noted above and a perusal of the same discloses that the petitioners have carried out the paper publication as directed by the Tribunal in one issue of the English Daily 'Business Standard' and the Hindi Daily 'Jansatta' (Delhi Edition) on 17.05.2019.

5. Further, in compliance with the directions issued by this Tribunal, a notice of the petition has also been served on the following authorities/sectoral regulators:

i. The Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs;

ii. Office of the Registrar of Companies, Ministry of Corporate Affairs, NCT of Delhi & Haryana;

iii. Income Tax Department, New Delhi in the respective circle/wards, through DCIT (High Court Cell), Lawyer's Chamber, Block No. 1, Room No. 428 & 429, Delhi High Court, New Delhi,

iv. Office of the Official Liquidator, Ministry of Corporate Affairs;

v. Office of the Reserve Bank of India having jurisdiction over the affairs of the Transferee Company.

6. That in response to the notices issued in the petition, Regional Director, Northern region, Ministry of Corporate Affairs has filed its report dated 24.7.2019 stating that there is no objection against the scheme, and said that the concerned petitioner companies have filed their annual returns and balance sheet up to the year ending 31.3.2018 and there is no prosecution, inspection or investigation pending against the petitioner companies.

7. Further submitted by RD that about clause 13.1 of the Scheme the Transferee Company should comply with the provisions of Sec 232(3) (i) of the Companies Act, 2013. The authority submits that as per clause 11.1 of the Scheme, the Transferor Company is a wholly owned subsidiary of Transferee Company. However, as per MCA records the Transferor Company are not a wholly owned

subsidiary, rather 6 numbers of shares of Transferor Company are being held jointly by Transferee Company and certain individuals. The transferor company has not filed for MGT-6 declaring the beneficial interest in those shares as per Section 89 of the Companies Act, 2013.

8. In response to the above observation, the petitioner companies have submitted an affidavit on 23.8.19 stating that upon scheme coming into effect, the authorized share capital of Transferor Company shall be added to and shall form part of the authorized share capital of Transferee Company. The Transferor Company has undertaken that the fee, if any, paid by the Transferor Company on its authorized capital shall be set-off against any fees payable by the Transferor Company on its authorized capital subsequent to the amalgamation and any additional fee to be paid by the Transferee Company.

9. It is further stated that the Transferor Company is a wholly owned subsidiary of the Transferee Company and out of total 1,40,50,000 issued shares of the transferee company, 1,40,49,994 shares amounting to 99.99 percent of the total issued share capital of the Transferor Company is held by six individuals and nominees jointly with the Transferee Company in order to fulfil the requirement of section 3(1) of companies act wherein it is stated that every public company has complied with the requirement of filing form MGT-6 declaring the beneficial interest in the 6 shares. Thus, observation of RD stands satisfied.

10. That the report of the Official Liquidator has been placed on record which states that the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from any person/party interested in the scheme. The Official Liquidator is of the view that the affairs of the aforesaid 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 or 2013, whichever is applicable. Hence, no objection has been raised in the report submitted by the Official Liquidator.

11. That the report of the Income Tax Department has been filed. As per the report it has been observed that all existing tax interest liabilities against the Transferor Company and the Transferee Company should be continued and should remain enforceable against the Transferee Company, and in case of receipt of any adverse information related to tax avoidance by the Transferor Company the proceedings should be started against the Transferee Company.

12. In this regard, the Transferor Company has filed an affidavit dated 27.2.2020 stating that under clause 16.6 of scheme, all tax liabilities, claims etc., relating to tax matters shall be continued against the Transferee Company pursuant to the approval of the merger.

13. The IT department also raised an objection that the nature of the business activities of the Petitioner Companies is not similar and there is no synergy in the business of the Petitioner Companies and neither any underlying object nor purpose from a business perspective has been highlighted in the scheme. They

said that scheme envisages carrying forward of loss and unabsorbed depreciation which may cause a loss to the department which may cause a loss to the IT department of Rs. 76,59,230/-. There were also objections raised by IT department in relation to impact of exemption of dividend distribution tax, non-filing of valuation report, and share exchange/swap ratio.

14. In respect of the above observation the Transferee Company filed an affidavit dated 27.2.20 in which the Transferee Company has stated that that the Transferor Company is a wholly owned subsidiary of the Transferee Company and both entities have business interests in the food and dining sector. As far as the tax losses of the Transferor Company are concerned, only the tax losses of the Transferor Company which can be transferred as per Section 72A of the IT Act, 1961 shall be transferred to the Transferee Company. About the observation of the department on whether the scheme will have any impact of exemption of dividend distribution tax, it has been stated that no dividend is proposed to be issued in scheme. About non-filing of valuation report and share exchange/swap ratio, the Transferee Company has stated that since no shares are being issued upon amalgamation, the aforesaid requirements does not rise. Thus, observation of IT Department stands satisfied.

15. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme and the affidavits filed by the Regional Director, Northern region, Ministry of Corporate Affairs, Official liquidator and submissions made by the Standing Counsel for the Income Tax Department, whereby no objections have been raised to the proposed Scheme or if raised has been met by filing undertaking, there appears no impediment to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by either of them. Consequently, sanction is hereby granted under Sections 230-232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

16. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as (Annexure-P-1) with the Company Petition as well as the prayer made therein.

17. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

18. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER: That in terms of the Scheme:

A. All the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, 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;

B. All the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company;

C. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company;

D. All the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service;

E. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of copy of the Order from the Registry;

F. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

G. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

H. Accordingly, the Scheme stands sanctioned and CAA -67(PB)/2019 is allowed.