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(2020) 06 NCLT CK 0036

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (CAA)-153(ND) Of 2019, Company Application No. CA(CAA)-159/(ND) Of 2019

Dytek India Limited APPELLANT

Vs

Anfilco Limited RESPONDENT

Date of Decision : 08-06-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232, 233, 234

Citation : (2020) 06 NCLT CK 0036

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

Bench : Division Bench

Advocate : Abhishek Nahta, Sameer Gupta, Tania Sharma, Deepak Anand, Vipul Agrawal

Final Decision : Disposed Of

Judgement

P.S.N. Prasad, J

1. The "Transferor Company", Dytek India Limited is a company incorporated on December 07, 1981 under the Companies Act, 1956. The registered office is at 1, Sri Aurobindo Marg, New Delhi-1 10016.

2. The "Transferee Company", Anfilco Limited is a company incorporated on March 27, 1975 under the Companies Act, 1956. The registered office is at 1, Sri Aurobindo Marg, New Delhi-110016.

3. Record of this Tribunal in relation to the First motion joint application filed by the petitioner companies involved in the Scheme of Amalgamation in company Application No. CA(CAA) No. 159/ND/2019 discloses that based on the representations made in the joint application and also taking into consideration the provisions of Section 230-232 of the Companies Act, 2013, the requirements of meetings of equity shareholders, secured creditor(s) and unsecured creditor(s) in relation to Petitioner Companies got dispensed with vide order dated 01.11.2019. On 22/11/2019 the Petitioner Companies were directed to carry out

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publication in the newspapers 'Business Standard'(English, Delhi edition)and 'Business Standard' (Hindi, Delhi edition). In addition to the public notice, notices were directed to be served on to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income tax authorities, Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator and to other relevant Sectoral Regulators.

4. It is seen from the records that the Petitioners have filed an affidavit on 20/12/2019 affirming compliance of the order passed by the Tribunal dated 22.11.2019. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in newspapers 'Business Standard'(English, Delhi edition) on 30/11/2019 and 'Business Standard' (Hindi, Delhi edition)on 30/11/2019 in relation to the date of hearing of the petition. Further, the copies of petition have been duly served to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income tax authorities, Registrar of Companies, NCT of Delhi and Haryana and Official Liquidator (Delhi)compliance of the order and in proof of service has also been placed on record.

5. The Regional Director (Northern Region) has filed its representation dated 23.12.2019 in which it is submitted that basis report from Registrar of Companies, no prosecution has been filed nor any inspection or investigation has been conducted in respect of petitioner companies.

6. The Official Liquidator has filed its report wherein it has been stated that he has not received any compliant against the proposed Scheme from any person/ party interested in the scheme in any manner and that the affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest.

7. It is pertinent to note that vide order dated 07/02/2020 of this Tribunal, the Income Tax Department was given one last opportunity to file observations. Despite that no observation by the Income Tax Department has been filed. While on 08.05.2020 at the time of oral hearing the counsel for the Income Tax Department has submitted its no objection to the sanction of the Scheme.

8. In the joint petition it has also been affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 are pending against the Petitioner Companies.

9. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

10. The shareholders of the applicant companies are the best Judges of their

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interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

11. In the case of Hindustan Lever Employees Union V. Hindustan Lever Limited (1995) 5 SCC 491 the three judges Bench of Hon'ble Supreme Court held that:

'A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.'

12. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

13. It has also been affirmed in the petition that the Scheme is in the interest of all the transferor companies and the transferee company including their shareholders, creditors, employees and all concerned.

14. 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 and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.

15. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

16. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

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 to the scheme 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, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

19. THIS TRIBUNAL DO FURTHER ORDER

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1. That the Transferor Companies shall stand dissolved without following the process of winding-up; and

2. That 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 Companies Act, 2013, be transferred to and vest in the transferee company.

3. That 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; and

4. That all proceedings now pending by or against all the Transferor Companies, be continued by or against the transferee company; and

5. That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme lakes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Companies on the said date.

6. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered to the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

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

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

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