(2023) 06 NCLT CK 0086

In the National Company Law Tribunal

Case No : CP (CAA)/31/MB-IV/2023 In CA (CAA)/204/MB/2021

Equinox Realty Private Limited Vs

Date of Decision : 14-06-2023

Acts Referred:
Companies Act, 2013 — Section 73, 90, 230, 232, 232(3)(i)

Citation : (2023) 06 NCLT CK 0086

Hon'ble Judges : Kishore Vemulappali, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. The Bench convened through video conferencing.

2. Heard the learned Counsel for the Petitioner Companies and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai.

3. The sanction of the Tribunal is sought under section 232 read with section 230 of the Companies Act, 2013 read with the Scheme of Merger by Absorption Between Equinox Realty Private Limited (First Petitioner Company or First Transferor Company) Shree Balaji Trustee Company Private Limited (Second Petitioner Company or Second Transferor Company) and Nirmit EPC Services Private Limited (Third Petitioner Company or Third Transferor Company) and Arkay Holdings Limited (First Non-Petitioner Company or Fourth Transferor Company) With Niwas Residential and Commercial Properties Private Limited (Second Non-Petitioner Company or Transferee Company) and their respective Shareholders. The Petitioner Companies are having its registered offices within the jurisdiction of this Hon’ble Tribunal, further the Transferor Company -4 and Transferee Company are having the registered offices within the jurisdiction of Hon’ble Tribunal, Chennai bench.

4. That the First Petitioner Company is engaged in the business as agents, importers, exporters, buyers, sellers, stockiest, distributors, processors, assemblers, dealers, traders, in all kinds of goods including but not limited to consumers electronics, domestic appliances, entertainment products, machineries, equipments, media and content in all its forms, components and spares, accessories, communication services including pre-paid and post-paid connections, internet packages, all kinds of telecom related products including but not limited to mobile handsets, other telecom apparatus etc. Currently, the First Petitioner Company is inoperative and not engaged in any business activities, hence it is decided to merge the First Petitioner Company in its parent company i.e. Niwas Residential and Commercial Properties Private Limited to achieve the objective of consolidation, the Second Petitioner Company was incorporated to carry on the business of wealth management, including undertaking and exercising all of the fiduciary duties, performing the office and duties of a trustee of any trust or trusts created in this regard, either solely or jointly with others; undertaking, performing and discharging or causing to be performed or discharged any duties in relation to or in any way incidental to any such wealth management business or trust; exercising all or any trust power or discretion lawfully exercisable in connection with any such office (including the power to renounce probate of any will, disclaim any trust, retire from any trusteeship, or appoint new trustees) etc. Currently, the Second Petitioner Company is inoperative and not engaged in any business activities, hence it is decided to merge the Second Petitioner Company in its parent company i.e. Niwas Residential and Commercial Properties Private Limited to achieve the objective of consolidation. And the Third Petitioner Company was incorporated to carry on the business of Design, Manufacture, Erection, Alteration, Fabrications, Repairs, Refurbishment, Conversion and Installation including Engineering, Contracting and Constructions of plant, building, structures, technological structures, ways, works, systems, mechanical, electrical and electronic machinery, mass tonnage of sophisticated heavy engineering and technological equipment, pressure vessels etc and carry on the business of manufacturers, traders, dealers, EPC (Engineering, Procurement & Construction) contractor and/ or subcontractor, importers and exporters (for raw material and/or finished goods), merchants, agents, factors and financiers related with capital goods industry and in particular execution & supply of plant, building, structures, technological structures, ways, works etc. Currently, the Third Petitioner Company is inoperative and not engaged in any business activities, hence it is decided to merge the Third Petitioner Company in its parent company i.e. Niwas Residential and Commercial Properties Private Limited to achieve the objective of consolidation.

5. The Board of Directors of the Petitioner Companies have approved the said Scheme in their respective Board Meetings held on 26th July, 2021. The Appointed Date as mentioned in the Scheme is 1st April 2021.

6. That the Petitioner Companies stated that the Petition have been filed in

consonance with the order dated 24th November, 2022, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/204/MB-IV/2021.

7. That the Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted by the Petitioner Companies.

8. The Learned Counsel for the Petitioner Companies states that, the restructuring, consolidation and streamlining pursuant to this Scheme, would inter alia have the following benefits:

i. The Transferor Companies and Transferee Company are under the same management, the merger of the Transferor Companies with the Transferee Company will remove inefficiencies and result in simplification, streamlining and optimization of the group structure and efficient administration;

ii. Achieving operational and management efficiency by way of consolidation of segregated companies under one Company;

iii. Post-Merger of Transferor Companies with Transferee Company, the Transferor Companies shall stand dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory requirements, tax filings, company law requirements, etc. and therefore reduction in administrative costs.

9. The Petitioner Company submits that as the First Transferor Company, Second Transferor Company and Third Transferor Company are the wholly-owned subsidiary of the Transferee Company, no consideration shall be payable pursuant to the Merger by Absorption of the First Transferor Company, Second Transferor Company and Third Transferor Company with the Transferee Company, and the shares held by the Transferee Company in the First Transferor Company shall stand cancelled without any further act, application or deed.

10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 12th May, 2023, making certain observations and the Petition Companies has undertaken/ made following submission that:

a. the Transferor Company No. 4 and Transferee Company have filed a Joint Company Scheme Application with the Hon’ble Tribunal, Chennai Bench and the same is pending before it.

b. this joint Company Scheme Application has been filed within one year of the Appointed Date. i.e. 1st April, 2021, hence the Petitioner Companies states that they are in compliance of the circular no. F. No. 7/12/2019/CL-I dated 21.08.2019.

c. The Petitioner Companies shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Companies are dissolved and the fees, if any, paid by the Transferor Companies on their Authorised share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Scheme of Merger by Absorption, the remaining fee, if any after setting-off the fees already paid by the Transferor Companies on their authorized capital, will be paid by the Transferee Company.

d. The Petitioner Companies shall protect the interest of Creditors.

e. the Petitioner Companies shall comply with the other applicable Accounting Standards, such as AS-5 (IND AS-8) etc., to the extent applicable.

f. the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.

g. the Petitioner Companies shall comply with any such directions issued by the said Income Tax Authorities, if received.

h. the Petitioner Companies are currently not engaged in any business activities, hence obtaining the approval from the Real Estate Regulatory Authority does not arise.

i. the Petitioner Companies have complied with the provisions of section 90 of Companies Act, 2013 r/w Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and have filed the Form BEN-2, along with the applicable fees or additional fees.

11. The Official Liquidator has filed its report on 30th May, 2023, making certain observations and the Petitioner Companies have undertaken /made following submissions:

a. the First Petitioner Company states that the Statutory Auditors have made an adverse qualification with respect to the financial state of affairs of the First Petitioner Company, that the Financial Statements indicates a negative net worth of Rs. 35.51 crores as on 31st March, 2020. As the Accounts are prepared on going concern basis, the financial position keeps on changing. Further, the First Transferor Company is the wholly owned subsidiary of the Transferee Company and post-merger the accounts of the Transferor Companies will be merged with the Transferee Company, the consolidated Financial statement of the Transferee company after merger will not affect the Scheme.

b. the Third Petitioner Company states that the Statutory Auditors have made an adverse qualification with respect to the financial state of affairs of the Third Petitioner Company, that the Financial Statements indicates a negative net worth of Rs. 6.48 Lakhs as on 31st March, 2021. As the Accounts are prepared on going concern basis, the Financial position keeps on changing. Further, the Third Transferor Company is the wholly owned subsidiary of the Transferee Company and post-merger the accounts of the Transferor Companies will be merged with the Transferee Company, the consolidated Financial statement of the Transferee company after merger will not affect the Scheme.

c. the Third Petitioner Company submits that the there is an advance received from others of Rs. 2,45,400/- as on 31st March 2021, the said amount was received as advance from a group company named M/s. EPC Construction India Limited, formerly known as M/s. Essar Projects India Limited which falls under exempted deposit categories as per the Section 73 rule 2(1)(c)(vi) of companies (acceptance of deposits) Rule, 2014, accordingly, it will not be considered as deposit or violation of other provisions of the companies Act 2013.

12. The Official Liquidator submitted that their observations/ objections have been satisfactorily explained by the Petitioner Companies and are acceptable to them. Hence, the Official Liquidator does not have any further objection to the proposed Company Scheme Petition.

13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

14. All the assets and liabilities including taxes and charges, if any and duties of the Transferor Companies, shall, pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

15. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/31/MB-IV/2023 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.

16. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28 in addition to physical copy, within 30 days from the date of receipt of order, duly certified by the Deputy Registrar/ Assistant Registrar, as the case may be, of this Tribunal.

17. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar/ Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.

18. 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.

19. The Scheme of Merger by Absorption is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st day of April, 2021. The Scheme shall be operative from the “Effective Date” as per the provisions of the Scheme.

