(2023) 03 NCLT CK 0084

In the National Company Law Tribunal

Case No : C.P.(CAA)/166/MB-IV/2022 Connected with C.A.(CAA)/253/MB-IV/2021

Exacta Fluid Engineering Co. Private Limited Vs

Date of Decision : 29-03-2023

Acts Referred:
Companies Act, 2013 — Section 230, 232

Citation : (2023) 03 NCLT CK 0084

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

Bench : Division Bench

Advocate : Ahmed M. Chunawala, Yahya Batatawala, Yahya Batatawala

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. The Bench is conveyed by videoconference.

2. Heard the learned Counsel for the Petitioner Companies and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objection has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition, unless otherwise stated hereinafter.

3. The sanction of the Tribunal is sought under Sections 232 read with Section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Amalgamation of Exacta Fluid Engineering Co. Private Limited (Transferor Company) with Fluidline Valves International Private Limited (Transferee Company) and their respective Shareholders.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 29th October, 2021.

5. The Company Scheme Petition has been filed in consonance with the Order

passed in the CA(CAA) 253/MB-IV/2021 of the Hon'ble Tribunal and Petitioner Companies have complied with all directions in the said order. The Petitioners have filed necessary affidavits of compliance before the Bench.

6. The Petitioner Companies states that the Petitioner Companies are presently engaged in the business activities of manufacture, fabricate, produce, assemble, alter, build, construct, convert, commercialize, control, design, develop, display, lay down, establish, erect, equip, fitting up, hire, handle, let on hire, install, maintain, operate, promote repair, overhaul, renovate, recondition, remodel, service, supervise, supply, import, export, buy, sell, turn to account Exact Specialize Multipart Sector Industrial Valves related to Oil and Gas distribution industries and to manufacture all Engineering Goods and Equipments belonging to industries, public utilities, defense, transport, power and other allied areas including Oil and Gas industry and to act as agent, broker concessionaires, consultant, collaborator, job workers, or otherwise to deal in all capacity, modalities, specifications, descriptions, characteristics and applications of and to manufacture and fabricate Industrial valves and Equipments, and to act as techno-consultants for clients and to enter into any arrangement by way of a turn key project involving supply of technical, civil, plant and merchandise, information, knowledge and experience and as such undertake for and on behalf of a client to set up any plant or project in or outside India in the manufacturing of various types of industrial valves and equipment's and their parts, fittings, accessories, components and hardware and to do all such acts and things necessary for attainment of above objects.

7. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies; and is intended to achieve greater efficiencies in operations with optimum utilization of resources, better administration and reduced cost, avoidance of duplication of regulatory and procedural compliances and consequently result into saving of time, resources and cost involved and therefore increased cost savings are expected to flow from focused operational efforts. It is stated to have following benefits :-

a. The amalgamation would result in greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to reduced cost and synergy benefits and to maximize shareholders value;

b. The amalgamation would result in greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholders value, and will improve the competitive position of the combined entity;

c. The consolidation of operations of both the companies by way of amalgamation would lead to a more efficient utilization of capital and will result in administrative and operational rationalization and promote organizational efficiencies as the Transferor Company and the Transferee Company are part of the same management group and have common majority of equity shareholders;

d. Reduce cost on compliance.

8. Consideration: The Scheme provides for following consideration to the shareholders of Petitioner Companies, which has been decided based on report of Independent Valuer :-

" 12.1 The shareholders of the Transferor Company (whose names are registered in the Register of Members of the Transferor Company on Record Date, or his/her/ its legal heirs, executors, administrators or successors) shall" without further application, act or deed, will be allotted one (1) Equity Shares of Rs.10/- each of the Transferee Company for their every Eight (8) Equity Shares of Rs.10/- each fully paid-up of the Transferor Company i.e. in the Ratio of 8:1 ("share exchange ratio"). If any of the shareholders of the Transferor Company becomes entitled to receive fraction of such an Equity Share in the Capital of the Transferee Company, such fraction shall be rounded off to the nearest integer. "

9. The Regional Director has filed his Report dated 31.01.2023 making certain observations. The Petitioner Companies have submitted/undertaken that :-

a. the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company subsequent to the Amalgamation and therefore, Petitioner Companies affirm to comply with the provisions of this Section;

b. the Petitioner Companies shall pass such accounting entries which are necessary in connection with the implementation of scheme to comply with applicable Accounting Standards.;

c. the notices have been served to the concerned authorities which are likely to be affected by Amalgamation.

d. The interest of creditors will be protected.

e. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

f. Exacta Fluid Engineering Co. Private Limited (Transferor Company) has filed Form BEN 2 vide SRN No. F58266347 dated 01/02/2023 and Exacta Fluid Engineering Co. Private Limited (Transferor Company) has filed the Form PAS 3 with the Registrar of Companies vide SRN No. H66856899 dated 19/06/2019.

10. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

11. The Official Liquidator has filed his representation on 22nd September, 2022,

inter alia stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that his representation may be taken on record.

12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

13. Since all the requisite statutory compliances have been fulfilled, CP(CAA). 166/MB/2022 is made absolute in terms of prayer clauses (a) of the said Company Scheme Petition.

14. The First Petitioner Company be dissolved without winding up.

15. The Income Tax Department will be at liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

16. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation 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 the Order from the Registry.

17. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

18. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.

19. The Appointed Date is 1st October, 2021.

20. Ordered Accordingly.

