(2023) 01 NCLT CK 0060

In the National Company Law Tribunal

Case No : CP No.19/Chd/Hry/2022

Faye Builders & Constructions Private Limited Vs Registrar of Companies ?

Date of Decision : 23-01-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232, 232(3)(i), 252(3), 455
Income Tax Act, 1961 — Section 170(2A)

Citation : (2023) 01 NCLT CK 0060

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Veenu Marwaha, Pankaj Khullar, Yogesh Putney, Harveet Singh Sehgal

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint second motion company petition filed by the Petitioner Companies, namely, Faye Builders & Constructions Private Limited (Transferor Company No. 1/Petitioner Company No.1) and Garv Realtors Private Limited (Transferor Company No. 2/Petitioner Company No.2) with Garv Developers Private Limited (Transferee Company/Petitioner Company No. 3) in terms of Sections 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure- P-1 of the petition.

3. The first motion application was filed before this Tribunal by Company Application No. CA (CAA) No. 52/Chd/Hry/2021 which was disposed of on 24.03.2022 wherein the meetings of Equity Shareholders, Secured and Unsecured Creditors of all the Applicant Companies And Compulsorily Convertible Debenture Holders of Applicant Company No. 2 were dispensed with for the

reasons recorded in the aforementioned order.

4. The main objects, date of incorporation, authorized and paid-up share capital and the rationale of the Scheme have been discussed in detail in the order dated 24.03.2022.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 06.05.2022 and the same were complied by filing an affidavit by Diary No. 00559/01 dated 14.07.2022. The notice of hearing was published in “The Tribune” (English) and “Dainik Bhaskar” (Hindi) both Delhi NCR Edition on 07.06.2022 and the original copies of the newspapers are attached as Annexure-A1 of the aforesaid affidavit. It is also stated in the affidavit furnished by petitioner companies that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; (2) Registrar of Companies, NCT of Delhi and Haryana; (3) Official Liquidator and (4) the jurisdictional Income Tax Department, by way of speed post. Original postal receipts along with service receipts are attached as Annexure A-2 of the aforesaid affidavit.

6. It is deposed by the authorized signatories of petitioner companies that neither the petitioner companies nor their counsels have received any objections relating to the present Scheme from any stakeholders or the general public at large till date. The aforesaid affidavit has been filed vide Diary No.00559/01 dated 14.07.2022.

7. In response to the abovementioned notices, the statutory authorities have furnished their responses/no objection.

7.1 Registrar of Companies (RoC)/Regional Director (RD)

7.1.1 The Regional Director (RD) has filed its report along with the report of the Registrar of Companies (RoC) by Diary No. 559/03 dated 28.07.2022.

7.1.2 It is stated in the report of the Regional Director that as per clause 31 of Registrar of Companies, report dated 12.07.2022 the following observations were raised.

? “As per Audited Financial Statement of Transferor Companies No.01 and 02 have nil (0) revenue from operations and have no significant transactions over period of last two years. Hence, These Companies are dormant u/s 455 of the Companies Act, 2013.

? The Transferee company may kindly be directed to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 in regard to fee payable of its revised Authorized Share Capital.”

7.1.3 The Transferor Companies are merging into the Transferee Company and considering the strong financials of the Transferee Company, no adverse observation is made against the Petitioner Companies on the ground that Transferor Companies was stated to be dormant. As regard to the compliance of Section 232(3) (i) of the Companies Act, 2013, separate order are passed by this Tribunal in the subsequent paragraphs.

7.1.4 Thus, the Regional Director has made no adverse observations with regard to the proposed Scheme of Amalgamation.

7.2 Income Tax Department

7.2.1 The Income Tax Department has filed its report by Diary No. 00559/6 dated 14.10.2022 in respect of the Transferor Company No. 1 and 2 stating that there is no demand is pending in respect of the Transferor Company No. 1 and a demand of Rs.3,59,218/- for Assessment Year 2015-16 is pending in respect of Transferor Company No. 2.

7.2.2 The Income Tax Department has not filed the report in respect of the Transferee Company. This Tribunal is not shutting out the legitimate interest of the income-tax authorities to recover the lawful dues payable by the petitioner companies, and the scheme provides savings in relation to the liabilities as well, the rights of the tax authorities remain intact, and they can proceed against the companies in accordance with the law, if any amount is found due and payable.

7.2.3 Thus, the Income Tax Department’s report has made no adverse observations with regard to the proposed Scheme of Amalgamation.

7.3 Official Liquidator

7.3.1 The Official Liquidator filed its report dated 14.07.2022 by Diary No. 00559/2 dated 15.07.2022. The Official Liquidator in its report has reproduced the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements.

7.3.2 Thus, the Official Liquidator’s report has made no adverse observations with regard to the proposed Scheme of Amalgamation

8. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexures- P-15 of the petition.

9. We have heard the learned counsel for petitioner companies and learned counsel for the Income Tax Department and have perused the record carefully.

10. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by

the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation attached as Annexure - P-1 with the petition.

11. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

12. 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 is due or required 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:

i. 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 Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same; and

ii. 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 Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts of the Transferor Companies which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

v. All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

vi. That the Appointed Date for the scheme shall be 01.04.2021 as specified in the Scheme;

vii. That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;

viii. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Companies shares of Transferee Company to which they are entitled under the said Scheme;

ix. That the fee, if any, paid by the Transferor Companies on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme';

x. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961.

xi. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;

xii. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Companies and Transferee Company shall be consolidated accordingly, as the case may be; and

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

13. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

14. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

15. The Company Petition CP (CAA) No. 19/Chd/Hry/2022 is allowed and disposed of accordingly.

