(2023) 05 NCLT CK 0038

In the National Company Law Tribunal

Case No : C.P. (CAA)/203(MB)/2022 Connected with C.A.(CAA)/43(MB)/2022

Feedertech Shipping India Private Limited Vs

Date of Decision : 09-05-2023

Acts Referred:
Companies Act, 2013 — Section 66, 90, 230, 232, 232(3)(i)

Citation : (2023) 05 NCLT CK 0038

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

Bench : Division Bench

Advocate : Harsh Ruparelia, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. The Bench is convened through video conferencing.

2. Heard the Authorised Representative for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor have the Petitioner Companies controverted any averments made in the Petition to the said Scheme.

3. The sanction from the Tribunal is sought under Sections 230 r/w section 232 of the Companies Act, 2023 and read with Section 66 and other applicable provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Arrangement amongst Unifeeder Agencies India Private Limited ('Resulting Company' or 'Transferee Company') and Avana Logistek Limited ('Demerged Company') and Feedertech Shipping India Private Limited ('Transferor Company 1') and Transworld Shipping Agencies Private Limited ('Transferor Company 2') and their respective shareholders and creditors (the "Scheme").

4. The Board of Directors of the Transferor Company 1 and Transferee Company have approved the said scheme by passing the Board Resolution dated February 1, 2022, and the Board of Directors of the Transferor Company 2 and the Demerged Company have approved the said scheme by passing the Board

Resolution dated January 31, 2022 and February 7, 2022, respectively.

5. The Petitioner Companies states that the Company Scheme Petition has been filed in consonance with the order dated August 26, 2022 passed in C.A.(CAA) / 43(MB) / 2022 by this Bench.

6. The Petitioner Companies further states that the Petitioner Companies have complied with all the directions in C.A.(CAA) / 43(MB) / 2022 by this Bench and the Petitioner Companies have also filed necessary affidavits of compliance before this Tribunal.

7. The Transferor Company 1 was incorporated with an object to act as a maritime agent and shipping agent and carry on the business of buying and selling agents, commission agents, indent agents and clearing and forwarding agents and Transferor Company 2 was incorporated with an object to act as agents of Indian and Foreign shipping companies and carry out all related activities.

8. The Demerged Company was incorporated to establish, maintain and operate shipping transport service, public and private, for the carriage of mails, passengers, goods and livestock, between such ports or places or any seas, rivers and canals in any part of the world and Transferee Company was incorporated with an object to act as a maritime agent and shipping agent and carry on the business of buying and selling agents, commission agents, indent agents and clearing and forwarding agents.

9. The equity shares of the Petitioner Companies are not listed on any stock exchanges in India.

10. The Rationale for the Scheme:

"This Scheme provides for the amalgamation of the Transferor Companies into the Transferee Company and demerger of Demerged Undertaking (defined hereunder) into Transferee Company pursuant to Section 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013, and the rules and regulations made thereunder with a view to achieve the following benefits to the stakeholders:

• Consolidation of shipping agency business under one entity;

• Ensuring a streamlined group structure by reducing the number of legal entities in the group;

• Reducing the administrative costs of maintaining separate companies; and

• Pooling of assets, proprietary information, personnel, financial, managerial and technical resources of the companies, thereby contributing to the future growth of the merged entity."

11. Consideration :

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Upon this scheme becoming effective and upon amalgamation of Transferor Company 1 into Transferee Company in terms of this scheme, the Transferee Company shall, without any application, act or deed, issue and allot equity shares, credited as fully paid up, to the extent indicated below, to the members of the Transferor Company 1 holding fully paid up equity shares of the Transferor Company 1 (except itself) and whose names appear in the register of members of the Transferor Company 1 as on the Record Date, or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Transferor Company 1/ Transferee Company in the following proportion:

7.154 equity share of Rs. 10 each, fully paid up of the Transferee Company to be issued for every 10,000 equity share of Rs.10 each held by the shareholders of the Transferor Company 1.

12. The Regional Director has filed his Report dated 16.02.2023 making certain observations. The Petitioner Companies have submitted/undertaken that :-

a. There is no compromise in the Scheme with the creditors and the Petitioner Companies shall accordingly continue to meet the liabilities of its creditors as they arise in the normal course and hence, the interest of creditors will be protected.

b. The Transferee Company shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 in respect of fees payable by Transferee Company for increase of Authorized Share Capital on account of merger of companies.

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

d. The approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issue arising after giving effect to the Scheme and the decision of such authorities is binding on the Petitioner Companies.

e. The Petitioner companies shall comply with provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018, amended from time to time and make necessary filings with Registrar of Companies, if applicable in this regard. In case the Petitioner Companies have not complied with the aforesaid provisions, if applicable, liberty is given to the concerned Registrar of Companies to take appropriate remedies against the respective Petitioner Company in accordance with law with respect to the above issue, subject to availability of reliefs and remedies to the respective Petitioner Company under the applicable provisions of the Companies Act, 2013.

13. The Official Liquidator has filed its report dated March 1, 2023 in the C.A. (CAA)/43(MB)/2022, inter-alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner not prejudicial to the interest of the shareholders of the Transferor Companies and that the Transferor Companies may be ordered to be dissolved by this Tribunal.

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

15. 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. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA)/203(MB)/2022 is made absolute in terms of prayer in the Company Scheme Petition.

16. The Transferor Companies will be dissolved, without winding-up.

17. The creditors of undertaking, being demerged, shall be entitled to make claim against the resulting company as well as demerged company in relation to their debt up to the date of demerger. In case the resulting Company is made to pay the debt of such undertaking, it shall be entitled to seek reimbursement of the amount so paid from the Demerged Company.

18. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 days or an extended timeline with payment of additional fees, as may be applicable, from the date of receipt of the Order duly certified by the designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.

19. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by designated Deputy Registrar/Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified copy of the Order from the Registry of this Tribunal.

20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the designated Registrar of this Tribunal.

21. The Appointed Date of the Scheme is April 1, 2022.

22. Ordered Accordingly.

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