(2023) 08 NCLT CK 0024

In the National Company Law Tribunal

Case No : CP (CAA) 19 / MB / 2023 Connected with CA (CAA) 63/MB/2022

Fortuity Investments Private Limited Vs

Date of Decision : 18-08-2023

Acts Referred:
Companies Act, 2013 — Section 230, 232
Income Tax Act, 1961 — Section 2(1B)

Citation : (2023) 08 NCLT CK 0024

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

Bench : Division Bench

Advocate : Avinash R. Khanolkar, Surekha Yadav, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. Heard the learned Counsel for the Petitioners and the Authorized representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition, except as otherwise stated.

2. The sanction of this Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 for the Scheme of Merger by absorption (hereinafter as the Scheme) between Fortuity Investments Private Limited (Transferor Company) and Profitex Shares & Securities Private Limited (Transferee Company) and their respective shareholders.

3. The Fortuity Investments Private Limited (Transferor Company) is wholly owned subsidiary of the Profitex Shares & Securities Private Limited (Transferee Company) as the entire equity share capital of Transferor Company is held by Transferee Company and its nominee.

4. The Board of Directors of the Petitioner Companies passed a Resolution on 04.03.2022 respectively and approved the proposed Scheme. The appointed date of the Scheme shall be fixed as 01.04.2021.

5. The Transferor Company as well as Transferee Company are engaged in business of investments and trading of securities.

6. This Scheme inter-alia provides for the transfer and vesting of whole business undertaking of the 1st Petitioner Company to the 2nd Petitioner Company through merger by way of absorption.

7. The Petitioners states that the Petition has been filed in consonance with the order dated 10th November, 2022, passed by this Tribunal in the Company Scheme Application bearing C.A.(CAA)/63/MB/2022. The Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder, whichever is applicable.

8. The respective Board of Directors of the Petitioner Companies anticipate the following benefits pursuant to the Scheme:

Benefits of Merger by Absorption of Transferor Company with Transferee Company is as follows:

a) The merger will achieve greater financial strength and flexibility, to maximize the stakeholder's value.

b) Since both the Companies are into similar activities, the consolidation will help to have full integration of activities.

c) Transferor company is wholly owned subsidiary of transferee company and with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge the transferor company with transferee company.

d) The merger will provide for more productive and optimum utilization of various resources by pooling of financial resources of the Transferor Company and Transferee Company.

e) The merger will lead to greater efficiency including operational rationalization, organizational efficiency, cash flow management and access to cash flow of combined business activities which can be deployed more efficiently, eliminate inter corporate dependencies, minimize the administrative expenses and compliances and to maximize shareholders value.

f) The merger will result in a reduction in the multiplicity of legal and regulatory compliances required at present to be separately carried out by the Transferor company and the Transferee company.

9. The Regional Director has filed his Report dated 29.05.2023 making certain observations. The Petitioner Companies have submitted/undertaken that: -

a. The Scheme is compliant with the Circular no. F No. 7/12/2019/CL-I dated

21.08.2019 issued by the Ministry of Corporate Affairs.;

b. The scheme is compliant with provisions of Section 2(1B) of the Income Tax Act, 1961.;

c. No Inquiry, Investigations, Inspections, Prosecutions, Complaints under the applicable provisions of the Companies Act 2013 are pending against any of the Petitioner Companies.;

d. The interest of creditors will be protected; and

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

10. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that the 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 its Report dated 24.05.2023, inter alia stating therein the observations on the scheme as stated in paragraph 2 of the said Report. In response to the observations made by the Official Liquidator, the Petitioner Companies have filed reply affidavits cum rejoinder on 16.01.2023 and have given necessary clarifications and undertakings. The Official liquidator inter-alia stating that the affairs of the Transferor Company have been conducted in a proper manner and not prejudicial to the interest of its shareholders and / or to the public at large.

12. All the liabilities and duties if any of the Transferor Company be transferred to the Transferee Company without any further act or deed pursuant to section 230 to 232 of the Companies Act,2013 and shall vest in Transferee Company accordingly w.e.f. the Appointed Date.

13. 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.

14. 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. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P. (C.A.A.)/19/MB/2023 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.

15. Since the Transferor Company is wholly owned subsidiary of the Transferee Company, the shares held by the Transferee Company in the Transferor Company shall be cancelled, in terms of clause 9 of the Scheme, extinguished and annulled and shall be deemed to have been cancelled, extinguished and annulled without any further act or deed and no shares of the Transferee Company are required to be issued in lieu thereof to the shareholders of the Transferor Company.

16. The Transferor Company shall be dissolved without winding up.

17. 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 or the Assistant Registrar, as the case may be, of this Tribunal.

18. 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 certified copy of the order from the Registry of this Tribunal.

19. The Scheme is sanctioned hereby on the above terms and directions. Further, the appointed date of the Scheme is fixed as 1st April, 2021.

20. Ordered accordingly. CP (CAA) 19 / MB / 2023 connected with CA (CAA) 63 / MB / 2022 is Allowed and disposed-off. Files to be consigned to Records.

