(2020) 07 NCLT CK 0006

In the National Company Law Appellate Tribunal

Case No : Caa- 29/Nd/2020 In Company Appeal No. (Caa)-180(Nd)/2018

Garg Petroleum Private Limited And Ors — APPELLANT

Vs

Eclear Leasing And Finance Private Limited — RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 07 NCLT CK 0006

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Vijay Kumar Gupta, Sonam Sharma, Lakshmi Gurung, Sunil Aggarwal, Amish Tandon

Final Decision : Disposed Of

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under consideration is the CAA- 29/ ND/ 2020 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The present petition has been filed by the Petitioner Companies named above for the purpose of the approval of the Scheme of Amalgamation, as contemplated between the Companies and its Shareholders by way of Amalgamation of Transferor Companies with the Transferee Company. As per the Scheme of Amalgamation (in short, 'Scheme'), "M/S Garg Petroleum Private Limited (Transferor Company 1), M/s. I ME International Private Limited (Transferor Company 2), M/s. Kotia Estates Private Limited (Transferor Company 3), M/s. Simple Fin-Lease Private Limited (Transferor Company 4)" propose to get merged with M/s. Eclear Leasing and Finance Private Limited" (Transferee Company) as going concerns.

2. The Transferor Company Number 1 is a private Company limited by shares, was incorporated on 22nd January 1996, under the Companies Act, 1956. The

Transferor Company is having its Registered Office at 211, New Delhi House 27, Barakhamba Road, New Delhi-110001. Its Corporate Identification Number (in short "CIN") is U23203DL1996PTC075653.

3. The Transferor Company Number 2 is a private Company, was incorporated on 2nd September 1998, under the Companies Act, 1956. The Transferor Company is having its registered office at 211, New Delhi, House 27, Barakhamba Road, New Delhi-110001. Its Corporate Identification Number (in short "CIN") is U33119DL1998PTC095913.

4. The Transferor Company Number 3 is a private Company, was incorporated on 1st December 2004, under the Companies Act, 1956. The Transferor Company is having its registered office at 211, New Delhi, House 27, Barakhamba Road, New Delhi-110001. Its Corporate Identification Number (in short "CIN") is U45201DL2004PTC130872.

5. The Transferor Company Number 4 is a private Company, was incorporated on 10th January 1996, under the Companies Act, 1956. The Transferor Company is having its registered office at 211, New Delhi, House 27, Barakhamba Road, New Delhi-110001. Its Corporate Identification Number (in short "CIN") is U65910DL1996PTC075392.

6. The Transferee Company is a private Company, was incorporated on 2nd September 1998, under the Companies Act, 1956. The Transferee Company is having its registered office at 211, New Delhi, House 27, Barakhamba Road, New Delhi-110001. Its Corporate Identification Number (in short "CIN") is U74899DL1995PTC069216.

7. The Transferor Company Number 1 is carrying on the business of exporters, importers and dealer's inn fuel and other oils, LPJ. Kerosene mobile oil, petroleum of every kind and the business of refiners of such oil and all accessories required petroleum for the equipment and operation of the said oil wells and refiners and sell, deal, import and export the by-products of petroleum and lubricating oils.

8. The Transferor Company Number 2 is carrying on the business of manufacture, design, prepare, fabricate, install, equip, maintain, buy, sell, enter into collaboration, import and export, hospital, laboratory and industrial safety equipment, breathing equipment, Respiratory firefighting, first aid, fire safety, disaster safety and first aid equipment.

9. The Transferor Company Number 3 is carrying on the business of construction and infrastructure development.

10. The Transferor Company Number 4 is carrying on the business of leasing, finance, hire purchase and to finance, lease operation of all kinds of purchasing, selling, hiring or letting on hire all kinds of plant and machinery, equipment, computers, motor cars, trucks, motor lorries and to assist in financing of all and every kind of their purchase of deferred payment or similar transactions and to

subsidies finance of assist in subsidizing or financing the sale and maintenance of such goods.

11. The Transferee Company's main object is to lease and hire-purchase and general finance company and to acquire and to provide on lease or to provide on hire purchase basis all types of house hold appliances industrial and office plant, equipment, machinery, vehicles, buildings and real estate required for manufacturing, processing, transportation and trading business, to finance industrial enterprises and to promote companies engaged in industrial and trading business by way of Finance.

12. The Board of Directors of the Transferor Company have approved the present Scheme vide its Resolution dated 1st March 2018. The other necessary requirements have also been fulfilled as per the Order dated 07.01.2020 passed by this Bench in CA (CAA) - 180(ND)/2018.

13. The Counsel appearing for the Petitioner Companies has submitted that 5.1 of the present Scheme states that upon coming into effect of the scheme and with effect from the appointed date, the assets and properties whether comprised in any undertaking or otherwise of the Transferor Companies as defined herein, save as provided in sub clauses (i), (ii),(iii) shall under the provisions of Section 230-232 and other applicable provisions of the Act, and pursuant to the sanction of the NCLT, without any further act or deed or matter or thing to be made, done or executed but subject to the changes affecting the same as on the effect date, shall stand transferred to and vested in the Transferee Company as going concerns so as to become the undertaking and property of the Transferee Company from the appointed date.

14. Further, the RD filed its report on 13.3.2020 and stated that the Transferor Companies are regular in filing the statutory returns. It has further submitted that no objection/complaint/inspection/investigation or prosecution are pending against the Transferee Company. The RD has not raised any objection with regard to the sanction of the scheme.

15. The Official Liquidator (In short, 'OL') in his Report dated 18.02.2020, based on the information submitted by the Petitioner Companies, stated that no Complaint against the proposed Scheme is received from any person/ party interested in the Scheme in any manner till the date of filing of the Report.

16. The Ld. Counsel for the Income tax Department ('IT') has raised objection stating that there are demands raised against 1st and 2nd transferor companies, so the interest of the department may be taken care of. In reply the counsel for the petitioner companies submitted that the Scheme takes care of the interest of the department, as the transferee company shall be liable to pay the demands if any raised against the transferor companies by the Income tax Department as per law. However, para No. 21 herein below takes care of the interest of the Income tax Department.

17. Paragraph 15.1 of the Scheme provides that the Transferee Company shall follow the method of accounting as prescribed for the pooling of Interest method under Accounting Standard 14 as notified under the Companies Amended Rules 2016. This is being confirmed by the certificate issued by the Chartered Accountant.

18. Paragraph 3.2 of the Scheme provides for the rationale of the scheme of amalgamation, it states that the proposed amalgamation of the Transferor Companies with the Transferee Company is for the purposes of better, efficient and economical management, control and running of the businesses and for further development and growth of the business of the Transferee Company and the Transferee Company shall result in following benefits such as a. consolidation and simplification of the group structure b. Synchronizing of efforts to achieve uniform corporate policy c. reducing operating and compliance costs etc.

19. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013.

20. Taking into consideration the above facts, the Company Petitions are allowed and the Scheme of Amalgamation annexed with the Petitions is hereby Sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The Appointed date of the Scheme is 01.04.2019.

21. While approving the Scheme as above, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

22. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

23. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.

24. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.

25. Upon receiving the certified copy of this Order, the RoC concerned is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company.

26. The Order of sanction to this Scheme shall be prepared by the Registry as

per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14.12.2016

27. Accordingly, the Scheme stands sanctioned and CAA - 29/ ND/ 2020 stand disposed of.

