(2020) 12 NCLT CK 0112

In the National Company Law Tribunal

Case No : Company Application No. (CAA) 1089/MB Of 2020

GARWARE HOLDINGS LIMITED And Ors. Vs

Date of Decision : 04-12-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8
Companies Act, 2013 — Section 230, 230(1)(b), 230(5), 231, 232

Citation : (2020) 12 NCLT CK 0112

Hon'ble Judges : H.P. Chaturvedi, J;Ravikumar Duraisamy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi

Judgement

1. The Court convened by video-conference today 04.12.2020.

2. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Composite Scheme of Arrangement of Garware Holdings

Limited (â??GHLâ??) and Single Point Distribution Limited (â??SPDLâ??) and Garware Healthcare Limited (â??GHCLâ??) and Garware

Bestretch Limited (â??GBLâ??) with and into Garware Bestretch India Private Limited (â??GBIPLâ??) and their respective Shareholders under

Sections 230 to 232 read with other applicable provisions of the Companies Act, 2013. This Scheme provides for Amalgamation of GHL, SPDL,

GHCL and GBL with and into GBIPL on a going concern basis.

3. The Applicant Companies submits that First Applicant Company is a Non-banking Financial Company (â??NBFCâ??) registered as a

Systematically Important Non-Deposit Taking Core Investment Company with the Reserve Bank of India and is primarily holding shares in group

companies and money market mutual fund investments. The Second Applicant Company is incorporated for the purpose of engaging in the business of sub-contracting of logistic service, materials management, transportation, warehousing & distribution services. The Third Applicant Company is

incorporated for the purpose of engaging in the business of rendering auxiliary business services to its group companies. The Fourth Applicant

Company is primarily engaged in the business of carrying out manufacturing of latex and latex-free elastic rubber products and the Fifth Applicant

Company is incorporated with a primary object of carrying out business of manufacturing of latex and latex-free elastic rubber products.

4. The Applicant Companies submits that all the companies under this Scheme are part of same group. The Board of Directors of all the Applicant

Companies, at their meeting held on September 19, 2020, had approved the scheme of arrangement for merger of GHL, SPDL, GHCL, GBL and

GBIPL. The Board of Directors believe that the amalgamation would have the following benefits:

â?¢ Synergies arising out of consolidation, such as, enhancement of net worth of the combined business to capitalise on future growth

potential, optimal utilisation of resources;

â?¢ Merger would offer a greater potential to the combined entity to develop and further grow and diversify with better optimisation of

funds and efficient utilisation of resources;

â?¢ The merger in general will have beneficial results for the Companies, their shareholders, employees and all concerned;

â?¢ Achieving operational efficiencies and management efficiencies;

â?¢ Reducing the number of entities which will help in eliminating multiple accounting and auditing and also help in consolidation for

attracting future investors;

â?¢ Optimise the resources at consolidated entity level to facilitate greater ability of the Transferee Company to raise financial resources

for future expansion; and

â?¢ Reducing operational and compliance cost.

The Scheme is in the interest of the shareholders, creditors, lenders and various other stakeholders of the respective companies. It is not

prejudicial to the interests of shareholders, creditors, lenders and various other stakeholders of the respective companies.

5. The Applicant Companies submits that the Board of Directors of the Applicant Companies vide resolution dated 19th September 2020, approved the

Scheme of Amalgamation of GHL, SPDL, GHCL and GBL with and into GBIPL and their respective Shareholders. The Appointed Date of the

Scheme is 1st April 2020.

6. That there are 7 (Seven) Equity Shareholders in First Applicant Company and that the First Applicant Company having procured the consent

affidavits from all the Equity Shareholders which are annexed as â??Annexure F1â?? to the Company Application.

7. That there are 7 (Seven) Equity Shareholders in the Second Applicant Company and that the Second Applicant Company having procured the

consent affidavits from all the Equity Shareholders which are annexed as â??Annexure F2â?? to the Company Application.

8. That there are 7 (Seven) Equity Shareholders in the Third Applicant Company and that the Third Applicant Company having procured the consent

affidavits from all the Equity Shareholders which are annexed as â??Annexure F3â?? to the Company Application.

9. That there are 8 (Eight) Equity Shareholders in Fourth Applicant Company and that the Fourth Applicant Company having procured the consent

affidavits from all the Equity Shareholders which are annexed as â??Annexure F4â?? to the Company Application.

10. That there are 2 (Two) Equity Shareholders in Fifth Applicant Company and that the Fifth Applicant Company having procured the consent

affidavits from all the Equity Shareholders which are annexed as â??Annexure F5â?? to the Company Application.

11. In view of the fact that all the Equity Shareholders of all the Applicant Companies have given their consent affidavits, the meetings of the Equity

Shareholders of all the Applicant Companies are hereby dispensed with as prayed for.

12. The Learned Counsel for the Applicant Companies submits that there are no Secured Creditors in the First Applicant, the Second Applicant, Third

Applicant Company and Fifth Applicant Company. Therefore, the question of sending notices does not arise.

13. The Learned Counsel for the Applicant Companies submits that there are no Unsecured Creditors in the Third Applicant Company and Fifth

Applicant Company. Therefore, the question of sending notices does not arise.

14. The Learned Counsel for the Applicants further submits that the present Scheme is an arrangement between the Applicant Companies and their

shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with creditors as no

sacrifice is called for. The rights of the creditors are not affected as all the creditors would be paid off in the ordinary course of business. In view of

the fact that there is no compromise or arrangement with Creditors, the meetings of Creditors are hereby dispensed with. This bench hereby directs

the First, Second and Fourth Applicant Companies to issue notice to all its Creditors by Courier/Registered Post/Speed Post/Hand Delivery or through

Email (to those creditors whose email addresses are duly registered with the Applicant Companies for the purpose of receiving such notices by email),

at their last known address or email addresses as per the records of the Applicant Companies with a direction that they may submit their

representations , if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal and copy of such representations shall

simultaneously be served upon the the First, Second and Fourth Applicant Companies failing which, it shall be presumed that the Creditors have no

representations to make on the Scheme.

15. The Applicant Companies are directed to serve notices of present Application along with its enclosures upon : - (i) concerned Income Tax

Authority within whose jurisdiction the First Applicant Companyâ??s assessment is made (i.e. PAN : AAFCG1666A, Circle 1(2), PMT Building,

Swargate, Pune), Second Applicant Companyâ??s assessment is made (i.e. PAN : AAACF9002G, Ward 6(1), PMT Building, Swargate, Pune),

Third Applicant Companyâ??s assessment is (i.e. PAN : AADCG4825F, Circle 1(2), PMT Building, Swargate, Pune), Fourth Applicant

Companyâ??s assessment is made (i.e. PAN : AABCG8082C, Circle 5(1)(1), Aayakar Bhavan, Mumbai) Fifth Applicant Companyâ??s

assessment is made (i.e. PAN : AAICG2786J, Ward 1(1)(4), Aayakar Bhavan, Mumbai) (ii) the Central Government through the office of Regional

Director, Western Region, Ministry of Corporate Affairs, Mumbai and (iii) concerned Registrar of Companies (iv) The Reserve Bank of India, as the

First Applicant Company is registered as a Non-Banking Financial Company -

Core Investment Company with the Reserve Bank of India, with a

direction that they may, if they so wish, submit their representations, if any, within a period of thirty days (30) from the date of receipt of such notice to

the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies failing which, it shall be presumed that

the authorities have no representations to make on the proposals.

16. Additionally, the Transferor Companies are also directed to serve notice containing documents as above upon Official Liquidator, pursuant to

section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The

Tribunal is appointing M/s Kamlesh Mehta & Co., Chartered Accountants, M. No. 9322256605 and email id Kamlesh_b_mehta@yahoo.co.in to assist

the Official Liquidator to scrutinize the books of accounts of the said four Transferor Companies for the last 5 years and submit its representation/

report to the Tribunal. The aforesaid Companies to pay a total fees of Rs. 3,00,000/- for this purpose excluding all taxes. If no representation/

response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be

presumed that Official Liquidator has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016.

17. The Applicant Companies shall file compliance report with the registry in regard to the directions given in this Order in lieu of customary affidavit

of service, due to lockdown situation prevailing now proving service of notices to the regulatory authorities as stated above and do report to this

Tribunal that the directions regarding the issue of notices have been duly complied with.

18. Ordered accordingly. Pronounced in open Court today.