
(2020) 06 NCLT CK 0025

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (CAA)- 97(ND) Of 2019

Genesis Holdings Private Limited And Ors

APPELLANT

Vs

Genesis Dream Merchants Private Limited

RESPONDENT

Date of Decision : 22-06-2020

Acts Referred:

Companies Act, 2013 — Section 230, 231, 232, 232(1)(i)

Citation : (2020) 06 NCLT CK 0025

Hon'ble Judges : P.S.N. Prasad, J; Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Neeraj Parmar

Final Decision : Allowed

Judgement

P.S.N. Prasad, J

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of amalgamation, as contemplated between the companies and its shareholders and creditors by way of amalgamation of the Transferor/Petitioner Company No. 1 and 2 with the Transferee/Petitioner Company namely Genesis Holdings Private Limited (Petitioner/Transferor Company No. 1), Kaizen Realtors Private Limited (Petitioner/Transferor Company No. 2), (for brevity "Transferor Companies") and Genesis Dream Merchants Private Limited (Petitioner/Transferee Company No. 3), (for brevity Transferee Company") under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'the Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') in relation to the Scheme of Amalgamation (hereinafter referred to as the 'SCHEME') proposed between the petitioners and the said Scheme is also annexed as (Annexure R) to the petition.

2. From the records, it is seen that the First Motion Application seeking directions for dispensing with the meetings of the equity Shareholders was filed before this

Tribunal vide CA (CAA) No. 166(ND)/2018 and directions were issued by this Tribunal, wherein the meetings of the equity shareholders of the Transferee and Transferor Company was directed to be dispensed with vide order dated 25.10.2018.

3. Under the circumstances, the Petitioner Companies filed their joint petition for sanction of the Scheme of Amalgamation before this Tribunal, subsequent to the order of dispensation of the meeting in relation to both the Transferor Company and Transferee Company. This Tribunal ordered Notice in the Second Motion petition moved by the Petitioner Companies in connection with the scheme of amalgamation, to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the Income Tax Department, along with full details of assessing officer and PAN Card numbers of the companies; (d) Official Liquidator and to other sectoral regulators and to such other Objector(s), if any.

4. It was stated that an error was noted by the Transferor Company-2 in the list of shareholders filed by it with the CA (CAA)-166/ND/2018 and an application CAA-172/ND/2018 was filed for taking on record the correct list of Shareholders.

5. The Tribunal vide its order date 12.03.2019 issued directions to Transferor Company-2 to convene the meeting of equity shareholders on Monday, 15th April, 2019 at the registered office of Transferor Company-2 for approval of scheme of amalgamation between Transferor Company-1, Transferor Company-2 and Transferee Company.

6. It is stated that the said meeting was attended by all the equity shareholders, i.e. 5 (Five), of Transferor Company-2 and the total value of their shares is Rs. 86,20,000 (Rupees Eighty-Six Lakh Twenty Thousand Only), divided into 8,62,000 equity shares of Rs. 10 each, representing 100% of the total value of shares of the company. The said compromise or arrangement was read and explained by the Chairperson, Mr. Alok Tripathi, to the meeting and it was resolved unanimously.

7. It is seen from the records that the petitioners have filed an affidavit on 10.07.2019 in relation to the compliance of the order passed by the Tribunal on 02.07.2019 and a perusal of the same discloses that the Applicant Companies are not incorporated under any Special Act of Parliament and not registered with any sectoral regulator or authority. Thus, the notice of hearing of petition was not required to be served to any other sectoral regulator or authority except Registrar of Companies, Income Tax Cell, Regional Director and Official Liquidator.

8. Further, in compliance with the directions issued by this Tribunal, a notice of the petition has also been served on the following authorities:

i. The Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs;

ii. Office of the Registrar of Companies, Ministry of Corporate Affairs, NCT of Delhi & Haryana;

iii. Income Tax Department, New Delhi in the respective circle/wards, through DCIT (High Court Cell), Lawyer's Chamber, Block No. 1, Room No. 428 & 429, Delhi High Court, New Delhi,

iv. Office of the Official Liquidator, Ministry of Corporate Affairs;

9. That the Official Liquidator in its report which was filed in April, 2019 states that on the basis of information submitted to it by the Applicant Companies is of the view that the affairs of the Applicant Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act and the Tribunal may pass any such order(s) as deemed fit and proper in the facts and circumstance of the case. Hence, no objection has been raised in the report submitted by the Official Liquidator.

10. That the Regional Director, Northern Region, MCA to whom notice was issued has filed an Affidavit on 15.05.2019 before this Tribunal, New Delhi and upon perusal of the same, it is observed that the Regional Director has stated that all the petitioner Companies have filed their updated annual accounts and balance sheets to the year ending 31.03.2018 and that no prosecution has been filed and no inspection or investigation has been conducted against the petitioner companies. The Regional Director found the reply of the Companies to be satisfactory subject. The Regional Director does not have any adverse observation/remark against the Scheme of Amalgamation between the petitioner companies. Also, following observations specified by Registrar of Companies in its report dated 23.04.2019:

"Referring to the clause 7.1 of the scheme, the Transferee Company may kindly be directed to comply with the provision of Section 232(1)(i) of the Companies Act, 2013 in regard of fee payable on its revised authorized share capital".

11. The Transferee Company in a response to the observation of Registrar of Companies and pursuant to order dated 31.10.2019 had filed an undertaking dated 20.11.2019 confirming that the Transferee Company shall pay differential stamp duty, if any on its increased authorised share capital.

12. That the report of the Income Tax Department filed in 15.10.2019 has been placed on record which states that it has no-objection for the proposed amalgamation between Transferor Company-1, Transferor Company-2 and the Transferee Company. However, the Income Tax Department must be permitted to retain its recourse for recovery in respect of demand and any other future liabilities in respect of the assets sought to be transferred under the proposed scheme and the protection must be made explicitly in the final order and shall bind on all the parties to the scheme. Further there should be no limitation on the power of Income Tax Department for recovery, including imposition of

penalties etc. The approval of the scheme should not affect the tax treatment of the transaction under the Income Tax Act, 1961 or any other applicable taxing statute and nor should it serve as a defense for the companies concerned against tax treatment under the aforementioned statutes.

13. The tribunal vide its order dated 20.12.2019 de-reserved the order dated 25.11.2019 on the fact that the Transferor Company-1 exhibits the feature of Non-Banking Financial Company as it has more than 50% assets and more than 50% income during the year 2016-17 and 2017-18.

14. The Tribunal, via order dated 23.01.2020, directed the Transferor Company-1 to submit a copy of petition along with the scheme of amalgamation to the Reserve Bank of India to obtain its no-objection for the proposed amalgamation.

15. The Transferor Company-1 submitted an affidavit to the effect that it has complied with the directions of the Tribunal and had submitted the copy of petition along with the scheme of amalgamation to the Reserve Bank of India, New Delhi.

16. In view of the foregoing, upon considering the approval accorded by the members of the Petitioner Companies to the proposed Scheme and the affidavits filed by the Regional Director, Northern region, Ministry of Corporate Affairs, Official liquidator and submissions made by the Standing Counsel for the Income Tax Department, whereby no objections have been raised to the proposed Scheme or if raised has been met by filing undertaking, there appears no impediment to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by either of them. Consequently, sanction is hereby granted under Sections 230-232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

17. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as (Annexure R) with the Company Petition as well as the prayer made therein.

18. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

19. 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 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:

That in terms of the Scheme:

- A. 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 section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same;
- B. 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 section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company;
- C. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company;
- D. All the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service;
- E. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of copy of the Order from the Registry;
- F. 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 14th December, 2016.
- G. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- H. Accordingly, the Scheme stands sanctioned and CAA 97(ND)/2019 is allowed.