(2023) 07 NCLT CK 0050

In the National Company Law Tribunal

Case No : CA (CAA) No. 20/Chd/Hry/2023

Glen Appliances Private Limited Vs

Date of Decision : 24-07-2023

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(7), 232,232(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2023) 07 NCLT CK 0050

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Aditya Kumar Pandey,

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint first motion application filed by Applicant Companies namely; Glen Appliances Private Limited (Applicant Company/Demerged Company) with Whitebirch Ventures Private Limited (Applicant Company/Resulting Company) under Sections 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation and arrangement between the Applicant Companies. The said Scheme is attached as Annexure-P2 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of convening the meetings of the Equity Shareholders of the Applicant Company No. 1 & 2; Secured Creditors of the Applicant Company No 1; and Unsecured Creditors of the Applicant Company No. 1. The Applicant Company No. 2 does not have any Unsecured and Secured Creditor.

3. The Demerged Company is engaged in two businesses namely kitchenware business and real estate business. The Resulting Company is engaged in real

estate business only.

4. It is submitted that the registered offices of Applicant Companies are situated in the State of Haryana, therefore, the territorial jurisdiction of Applicant Companies fall with this Bench.

5. The rationale of the Scheme is given below:

The Kitchenware Business and Real Estate Business fall under different categories, the underlying opportunities, risks, competition and capital allocation are completely different thereby creating a need to segregate both businesses to enable greater management focus on the respective businesses. Both the businesses individually, have a significant potential for growth, profitability and the ability to attract different types of investors, strategic partners, lenders and other stakeholders. The proposed re-structuring would have the following benefits:

a. Enable a dedicated management focus and to accelerate growth of the Kitchenware Business;

b. Enable Real Estate Business to grow sustainably through focused strategy;

c. Enable flexibility in accessing capital by attracting investors for respective businesses;

d. Creation of an independent Company focusing exclusively on Real Estate Business and exploring activities in the said sector;

6. It is stated that the Board of Directors of the Demerged Company and Resulting Company in their respective meetings held on 15.11.2022, considered and unanimously approved the proposed Scheme of Arrangement subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of the Applicant Companies are attached as Annexure P-4 and P-27 with the application.

7. The appointed date of the Scheme for the purpose of the Arrangement shall be with effect from 1st April, 2023 as mentioned in Clause 1.1 (e) of Part-I of Scheme of Arrangement which is attached as Annexure: P-2 of the application.

8. It is stated that the Demerged Company has filed their Audited Financial Statements for the year ended 31st March, 2022 which are attached as Annexure P-6 respectively of the Application, Resulting company is incorporated on 10th August 2022 only and there is no Audited Financial Statement available. The Applicant Companies have also filed their Un-audited Financial Statements (provisional) for the period ended 31st December, 2022 and 15th November 2022 respectively which are attached as Annexure P-3 of filing dated 25.04.2023 and P-29 of the Application.

9. It is deposed by way of affidavit that no corporate debt restructuring is envisaged in the proposed Scheme of Amalgamation (Annexure- P25).

10. It is further submitted that in pursuance of the proviso to Section 230(7) and Section 232(3) of the Act, the Applicant Companies No. 1 & 2 have filed certificate dated 22.03.2023 issued by their respective Statutory Auditors certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure: P39 with the application.

11. It is further submitted by the counsel for the Applicant Companies that as per Valuation Report/Share Entitlement Ratio/Fairness Opinion Report dated

14 th November, 2022 submitted by Kunal L Kalantri, the Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI) vide Registration No. IBBI/RV/05/2018/10209 is attached as Annexure A-40. The Share Entitlement Ratio is given below:

"One (1) Equity Share of INR 10 (India Rupees Ten only) each of the Resulting Company shall be issued and allotted for each Equity Share of INR 10 (Indian Rupees Ten only) each of the Demerged Company based upon report furnished by registered valuer."

12. It is submitted by the learned counsel that the Scheme (Annexure P-2) also takes care of the interest of the staff/workers and employees of the Applicant Companies by virtue of Clause 9 of the Scheme.

13. It is deposed by the authorised representative of Applicant Companies that there are no material investigations or legal proceedings pending against any of the Applicant Companies under Section 210 to 227 of the Companies Act, 2013 and Section 235 to 251 of the Companies Act, 1956 or any other applicable law. Moreover, there are no proceedings pending under the Companies Act, 2013 before the jurisdictional Adjudicating Authority.

14. It is further deposed by the Applicant Companies that there are no sectoral regulator in the Applicant Companies whose approval may be required for the sanction of the Scheme of Amalgamation except the statutory authorities i.e. (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, NCT of Delhi and Haryana, New Delhi; (c) the Official Liquidator, Haryana, Chandigarh; (d) the Income Tax Department. It is also deposed that the proposed Scheme of Amalgamation will not attract the provisions of the Competition Act, 2002. Hence, no intimation to/approval from the Competition Commission of India (CCI) is required for the present Scheme of Amalgamation. There are no legal proceedings, inquiry, inspection, investigation, prosecution, litigation pending before any court of law or Tribunal against the Applicant Companies.

15. The Applicant Companies have furnished the following documents:

i. Proposed Scheme of Arrangement (Annexure P-2 of the application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure P-3, P-5, P -26 and P -28 respectively of the application).

iii. List of Equity Shareholders of the Applicant Company - 1 as on 30th September, 2022 along with consent affidavits (Annexure P-10 and P-12) and

iv. List of Equity Shareholders of the Applicant Company – 2 as on 15th November 2022 (Annexure P – 32 and P-34), respectively of the application.

v. List of Secured Creditors of the Demerged Company as on 30th September, 2022 duly certified by Chartered Accountants (Annexure - P– 13)

vi. List of Secured Creditors of Resulting Company as on 15th Nov, 2022 duly certified by Chartered Accountants (Annexure P – 35).

vii. List of Unsecured Creditors of the Demerged Company as on 30th September, 2022 duly certified by Chartered Accountants along with consent affidavits (Annexure P – 17 and P – 18 of the application).

viii. List of Unsecured Creditors of the Resulting Company as on 15th November, 2022 duly certified by Chartered Accountants (Annexure P – 37 of the application)

ix.Certificate of Statutory Auditors to the effect that the Accounting treatment proposed in the Scheme is in conformity with Section 133 of the Companies Act, 2013 of Demerged Company and Resulting Company (Annexure P – 20 and P-39 respectively of the application).

x. Audited Financial Statements as on 31st March, 2022 of the Applicant Company - 1 (Annexure – P - 6 of the application).

xi. Un-audited Financial Statements for the period ended on 31st December, 2022 of the Demerged Company (Annexure P- 3 of additional documents filed dated 25th April 2023) and of the Resulting Company (Annexure P- 29 of the application).

xii. Report on Valuation of Shares & Share Entitlement Ratio (Annexure P-40 of the application).

16. The Applicant Companies have furnished the details of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors as follows:

Name of the Applicant

Companies

Shareholders along with their consent on affidavits

Creditors along with their consent on affidavits

Equity Shareho lder (A)

Consent of (A) with

% age

Preference Shareholder (B)

Consent of (B)

with % age

Secured Creditors (C)

Consent of (C)

Unsecured creditors (D)

Consent of (D)

Applicant Company No.1

16

100%

Nil

NA

1

100%

284

99.99%

Applicant Company

No.2

2

100%

Nil

NA

Nil

NA

Nil

NA

17. Accordingly, the directions of this Bench in the present case are as under:

I.In relation to Applicant Company No. 1/Demerged Company:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consents by way of affidavits have been received;

b. The meeting of the Secured Creditors of Applicant Company No. 1/Demerged Company is dispensed herewith, keeping in view that the Consent of sole Secured Creditor has been received by way of affidavit;

c. The meeting of the Unsecured Creditors of Applicant Company No. 1/ Demerged Company is dispensed herewith, keeping in view that the Consent of Unsecured Creditors (99.99% in value) has been received by way of affidavits.

II. In relation to Applicant Company No. 2/Resulting Company:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consents by way of affidavits have been received;

b. Since, there are no Secured and Unsecured Creditors in the Applicant Company No. 2/Resulting Company, therefore, there is no scope of meeting.

18. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi (b) the Concerned Registrar of Companies (c) the Official Liquidator, (d) the Income Tax Department by disclosing the PAN of the Applicant Company in the title of the Second Motion Petition.

