(2024) 04 NCLT CK 0020

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : CA (CAA) - 32/ (ND)/2024

Glorious Impex Private Limited Vs

Date of Decision : 10-04-2024

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232

Citation : (2024) 04 NCLT CK 0020

Hon'ble Judges : Mahendra Khandelwal, Member (J);Dr. Sanjeev Ranjan, Member (T)

Bench : Division Bench

Advocate : Kartikeya Goel

Final Decision : Disposed Of

Judgement

Dr. Sanjeev Ranjan, Member (Technical)

1. This is a joint application filed by the applicant companies, herein, M/s Glorious Impex Private Limited (Demerged Company/Applicant Company-1) and M/s Saifai Hospitality Private Limited (Resulting Company/Applicant Company-2) under Section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 in relation to the Scheme of Arrangement in the nature of Demerger (hereinafter referred to as the “SCHEME”) proposed between the applicants.

2. The Applicant Company No. 1/Demerged Company i.e., M/s Glorious Impex Private Limited (CIN- U51909DL2008PTC185854) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 16.12.2008 having its registered office at Cabin No. 5, Mezzanine Floor, Plot No. 47, Community Centre, Naraina Industrial Area Phase-I, New Delhi-110028. The Authorized Share Capital of the Applicant Company No. 1/Demerged Company is Rs. 25,00,000/- divided into 2,50,000 Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs. 20,19,000/- divided into 2,01,900 Equity

Shares of Rs. 10/- each. The Applicant Company No.1/Demerged Company, vide their meeting of the Board of Directors held on 26.02.2024 have unanimously approved the proposed Scheme of Arrangement as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr. Abhay Raj being the authorized signatory of the Applicant Company 1, who has been authorized vide Board Resolution dated 26.02.2024 for the Demerged Company, was duly filed, along with the application. It was also represented that the registered office of the Applicant Company 1 is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and therefore, within the territorial jurisdiction of this Tribunal.

3. The Applicant Company No. 2/Resulting Company, i.e., M/s Saifai Hospitality Private Limited is a private limited company incorporated under the provisions of Companies Act, 2013, vide Certificate of Incorporation dated 19.01.2024 (CIN-U55101DL2024PTC425528) with Registrar of Companies, NCT of Delhi & Haryana and having its registered office at E-32, T/F, Jhilmil Colony, Shahdara, Delhi-110095. The Authorized Share Capital of the Applicant Company No. 2/ Resulting Company is Rs. 10,000/- divided into 1,000 Equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs. 10,000/- divided into 1,000 Equity Shares of Rs.10/- each. The Applicant Company No. 2/Resulting Company, vide their meeting of the Board of Directors held on 26.02.2024 have unanimously approved the proposed Scheme of Arrangement as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr. Pramod Singh Rawat being the authorized signatory of the Applicant Company 2, who has been authorized vide Board Resolutions dated 26.02.2024 for the Resulting Company, was duly filed, along with the application. It was also represented that the registered office of the Applicant Company 2 is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and therefore, within the territorial jurisdiction of this Tribunal.

4. The Demerged Company as well as the Resulting Company have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses. The Demerged Company has filed its latest Audited Annual Accounts for the Financial Year 31.03.2023. The Resulting Company has filed its unaudited (provisional) financial statements for the period ending 15.02.2024.

5. It has been stated that the Applicant Company-1/Demerged Company has 04 Equity Shareholders. Certificate from Chartered Accountant certifying list of Equity shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application. It was further represented that the Applicant Company-1 has nil Secured Creditors and 01 Unsecured Creditor. Certificate from Chartered Accountant certifying list of Secured and Unsecured Creditors of the Applicant Company-1 is annexed. Since the Company has Nil Secured Creditors, therefore, the necessity of convening/

holding a meeting does not arise. The sole Unsecured Creditor of the Applicant Company-1 has given its consent by way of affidavit which is annexed to the application.

6. It has been stated that the Applicant Company-2/Resulting Company has 02 Equity Shareholders. Certificate from Chartered Accountant certifying list of Equity shareholders is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It was further represented that the Company has Nil Secured Creditors and 02 Unsecured Creditors. Since the Company has Nil Secured Creditors, therefore, the necessity of convening/holding a meeting does not arise. It was further represented that both of the Unsecured Creditors of the Applicant Company-2 have given their respective consents by way of affidavits which are annexed to the application.

7. The appointed date as specified in the Scheme is 01.02.2024 subject to the directions of this Tribunal.

8. The Applicant Companies confirmed that the provisions relating to the accounting treatment for the proposed Arrangement, as contained in the Scheme, were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from respective Statutory Auditors of the Companies on the accounting treatment, as proposed in the Scheme, were annexed to the application and it is clearly stated that the accounting treatment is in conformity with the applicable prescribed under Section 133 of Companies Act, 2013.

9. The Applicant Companies have stated that no proceedings for inspection, inquiry or investigation were pending against any of the Applicant Companies.

10. Taking into consideration the submissions and the documents filed therewith, the following directions are issued with respect to convening/holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows:

A. In relation to the Applicant Company-1:

a) With respect to Equity Shareholders: In view of consent affidavits from 04 Equity Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are Nil Secured Creditor, therefore, the necessity of convening/holding a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits from 01 Unsecured Creditor, having 100% voting share, been filed, convening the meeting of Unsecured Creditor is dispensed with.

B. In relation to Applicant Company-2:

a) With respect to Equity shareholders: In view of consent affidavits from 02

Equity Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are Nil Secured Creditor, therefore the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits from 02 Unsecured Creditors, having 100% voting share, been filed, convening the meeting of Unsecured Creditors is dispensed with.

11. Notice of this application shall be served on the following:

i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110003;

ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

iii. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.

iv. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid terms and disposed off.

