(2021) 09 NCLT CK 0008

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (Caa)-63 (Nd)/2021 In Company Application No. Ca (Caa)-53(Nd)/2021

Govindam Dresses Private Limited Vs

Date of Decision : 10-09-2021

Acts Referred:
Companies Act, 2013 — Section 137, 230, 230(5), 232, 232(4)
Competition Act, 2002 — Section 7(1)

Citation : (2021) 09 NCLT CK 0008

Hon'ble Judges : Dr. Deepti Mukesh, Member (J);L. N. Gupta, Member (T)

Bench : Division Bench

Advocate : Abhishek Natha

Final Decision : Allowed

Judgement

L. N. Gupta, Member (T)

1. This Petition is preferred jointly by the Transferor Companies and Transferee Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for the purpose of the approval of the Scheme of Amalgamation (hereinafter referred to as 'Scheme' for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. That Govindam Dresses Private Limited, (hereinafter referred to as "Petitioner-1/Transferor Company-1") was incorporated on the 05.04.2005 under the provisions of the erstwhile Companies Act, 1956 as a private limited company having its registered office at 107, D.D.A. Hog Market, Rajendra Place New Delhi-110008 with CIN number U18101DL2005PTC134718.

3. That ANSU Infotech Private Limited, (hereinafter referred to as "Petitioner-2"/"Transferor Company-2") was incorporated on the 04.05.2005 under the provisions of the erstwhile Companies Act, 1956 as a private limited

company having its registered office at 107, D.D.A. Hog Market, Rajendra Place New Delhi-110008 with

4. That Diksha Windsor Computers Private Limited, (hereinafter referred to as "Petitioner-3"/"Transferee Company") was incorporated on the 20.06.2006 under the provisions of the erstwhile Companies Act, 1956 as a private company having its registered office at 2, Sardar Patel Marg Diplomatic Enclave, New Delhi, Central Delhi- 110021 with CIN number U72200DL2006PTC271618.

5. That the present Petition has been filed jointly by all the Transferor Companies and Transferee Company. All the 'Transferor' and 'Transferee' Companies together are called Petitioner Companies' hereinafter. That the Registered offices of all the Companies being in Delhi, the jurisdiction lies with this Bench.

6. From the records, it is seen that the First Motion petition was filed by the Petitioner Companies for seeking directions for dispensing with the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Companies. This Tribunal, in the First Motion Application bearing No. CA(CAA) No. 53 (ND)2021, vide Order dated 24.05.2021 dispensed with the requirement of convening the meetings of the equity shareholders and unsecured creditors of all applicant companies.

7. The Appointed date as fixed for the Proposed Scheme of Amalgamation is 01.04.2020.

8. Subsequent to the order of dispensation of meetings in relation to both the Transferor Companies and Transferee Company, the Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices to the Central Government, Registrar of Companies NCT of Delhi 85 Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, Reserve Bank of India and to such other Objector(s), if any, and also for publication of the said Scheme. The said petition was admitted and directions were issued, vide Order dated 11.06.2021 of this Tribunal, requiring the Applicant Companies to serve notices to the Central Government, Registrar of Companies NCT of Delhi 8s Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, and also to carry out necessary publication in English and Hindi newspapers with respect to the said Scheme.

9. It is submitted by the Petitioners that in compliance of the above stated directions, the Petitioners duly filed an Affidavit of Service by confirming that the aforesaid Notices of the present Company Petition were published on 15.06.2CT21 in Business Standard (English) and Business Standard (Hindi) daily newspapers. It is further submitted by the Petitioner Companies that the Notices of the present Company Petition have been served to all the statutory authorities.

10. That vide order dated 30.07.2021, this Bench has directed the Petitioner Companies to upload their latest balance sheet as on 31.03.2020. That the

Petitioner companies in compliance of the aforesaid direction has filed their Additional Affidavit stating that the Balance Sheet of the Financial Year 2019- 20 has been uploaded on the MCA website.

11. It is averred by the Petitioner Companies that the amalgamation is taking place between the holding and wholly owned subsidiary companies. Therefore, no new shares of the Transferee Company shall be issued and allotted in respect of the shares held by the Transferee Company or its other subsidiaries in the Transferor Company. Upon the Scheme becoming effective, the entire paid-up share capital of the Transferor Companies shall be cancelled and extinguished without any further act, deed or instrument as an integral part of this Scheme. The scanned copy of the relevant averment made by the Petitioner Companies in the Scheme is reproduced below :

PART III

CONSIDERATION AND ACCOUNTING TREATMENT EOR THE SCHEME.

8. CONSIDERATION

8.1. Since the Transferor Company 2 is a wholly owned subsidiary and Transferor Company 1 is an indirect wholly owned subsidiary of the Transferee Company i.e. the entire paid up share capital of the Transferor Companies is being directly or indirectly beneficially held by the Transferee Company, no new shares of the Transferee Company shall be issued and allotted in respect of shares held by the Transferee Company or its other subsidiaries in the Transferor Companies. Upon the Scheme becoming effective, the entire paid up share capital of the Transferor Companies shall be cancelled and extinguished without any further act, deed or instrument as an integral part of this Scheme,

12. The Regional Director (NR), New Delhi has filed its Additional Affidavit on 03.09.2021 and has not raised any objection towards the proposed Scheme. The scanned copy of the same is reproduced overleaf :

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT NEW DELHI

COMPANY APPLICATION NO. CA(CAA)-53/ND/2021

CONNECTED WITH

COMPANY PETITION NO. CP(CAA)-63/ND/2021

IN THE MATTER OF SECTIONS 230 TO 232 OF

THE COMPANIES ACT, 2013

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

GOVLNDAM DRESSES PRIVATE LIMITED

107, D.D.A. HOG MARKET, RAJENDRA PLACE NEW DELHI-110008

TRANSFEROR COMPANY/

PETITIONER COMPANY NO. 1

AND

ANSU INFOTECH PRIVATE LIMITED

(U74999DL2005PTC135840)

At: 107, D.D.A. HOG MARKET, RAJENDRA PLACE NEW DELHI-110008

TRANSFEROR COMPANY/

PETITIONER COMPANY NO. 2

AND

DIKSHA WINDSOR COMPUTERS PRIVATE LIMITED

2, SARDAR PATEL MARC, DIPLOMATIC ENCLAVE NEW DELIH-110021

TRANSFEREE COMPANY/

PETITIONER COMPANY NO. 3

ADDITIONAL AFFIDAVIT OF REGIONAL DIRECTOR NORTHERN REGION, MINISTRY OF CORPORATE AFFAIRS. NEW DELHI.

I, Dr. Raj Singh, Regional Director (NR), having my office at B-2 Wing, 2nd Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi- 110003, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and in pursuance of the notification of the Ministry of Corporate Affairs Dated 19.12.2016 in S.O. 4090 (E), I am authorized to swear this Affidavit for & on behalf of the Central Government.

2. That the Deponent in the Affidavit dated 29.07.2021 had the observation in Para 12 as under:

"In respect of the observation of the ROC stated in para II supra, the Hon 'hie Tribunal may kindly direct the petitioner Transferee Company to fde the statutory return with ROC since it is overdue in part of the said company. In view of the above it is prayed before the Hon 'ble Tribunal to direct the petitioner Transferee Company to comply the statutory provisions stipulated on the section 137 of the Companies Act, 2013 for approval of the scheme. "

3. That the Petitioner Companies at Paras 2 of their reply affidavit offered dated

05.08.2021 has respond to the observations of Deponent by stating as follows:

That, by an order dated 30.07.2021, the transferee company was directed to upload the balance sheet as on 31.03.2020 on MCA website and the balance sheet as on 31.03.2020 of Dilcsha Windsor Computers Private Limited has been uploaded on MCA website.

4. In view of the above, the submission of the Deponent is as under:

Pursuant to the observation of the deponent stated in the affidavit dated 29.07.2021 filed before the Hon'ble Tribunal, the said has been considered and it was directed by the Hon'ble Tribunal to the transferee company to comply with the provisions of section 137 of the Companies Act, 2013 by file its latest Balance sheet for the financial year ended on 31.03.2020 with the ROC. In compliance to the direction of the Hon'ble Tribunal, the petitioner transferee company has filed its Balance sheet as at 31.03.2020 with the ROC on 31.07.2021, hence the transferee company has complied with the directions issued by the Hon'ble Tribunal and also complied with the statutory requirement stipulated under the provisions of section 137 of the Act. In view of the above it is prayed before the Hon'ble Tribunal to consider the scheme filed by the petitioner companies on its merits.

13. That the Official Liquidator and Income Tax Department have not filed their reply despite opportunities. However, during the course of hearing on 18.08.2021, the Ld. Counsel Ms. Nandini appearing for the Income Tax Department submitted that IT Department has no objection to proposed the Scheme.

14. In terms of Section 230(5) of the Companies Act 2013, all Authorities are required to file their representations, if any, within 30 days from the date of receiving of notice failing which, it shall be presumed that they have no representations to make on the proposals. For the sake of convenience, Section 230(5) is quoted as below :

"(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals. "

It is, therefore, presumed that the Official Liquidator and Income Tax Department has no representation to make in respect of the Scheme. However, in order to protect the interest of tax revenue, it is made clear that there shall be no impediment on the power and jurisdiction of the Income Tax Department in recovery of Income Tax dues, penalties etc., pending if any, as provided in the law.

15. In view of the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of all Companies to the proposed Scheme and no sustainable objections having been raised by the Office of the Regional Director, Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme. Accordingly, in sequel to the above, sanction is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013. The sanctioned Scheme of Amalgamation shall be binding on the Transferor Companies and Transferee Company (the Applicant / Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

16. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the Petitioner Companies.

17. 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 other statutory dues, if any, and payment in accordance with law or in respect to any permission /compliance with any other requirement, which may be specifically required under any law. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Petitioner Companies against tax treatment in accordance with the provisions of Income Tax Act, 1961.

18. THIS TRIBUNAL FURTHER DIRECTS with respect to Transferor Companies and Transferee Company, that:

(i) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 1st April, 2020, the Transferor Companies no.l and 2 shall stand dissolved without undergoing the process of winding up.

(ii) No new shares of the Transferee Company shall be issued and allotted in respect of the shares held by the Transferee Company or its other subsidiaries in the Transferor Company. Upon the Scheme becoming effective, the entire paid-up share capital of the Transferor Companies shall be cancelled and extinguished without any further act, deed or instrument as an integral part of this Scheme.

(iii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entiy Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

(iv) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

(v) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(vi) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

(vii) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

(viii) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

19. That the Petitioner Companies shall within thirty days of the date of the receipt of this Order cause a Certified Copy of this Order to be delivered to the Registrar of Companies for registration and on such Certified Copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

20. The Company Petition is ALLOWED in the above terms.

