(2022) 04 NCLT CK 0063

In the National Company Law Tribunal

Case No : CP (CAA) No.29/ALD/2021 Connected with CA (CAA) No.01/ALD/2021

Goyal Edibles Private Limited Vs

Date of Decision : 18-04-2022

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(1), 230(6), 232, 232(1), 232(3)

Citation : (2022) 04 NCLT CK 0063

Hon'ble Judges : Rajasekhar V.K., Member (J);Virendra Kumar Gupta, Member (T)

Bench : Division Bench

Advocate : Madan Kumar Maroti, N. Gurumurthy, Aisha Amin, Kuldip Singh

Final Decision : Disposed Of

Judgement

Rajasekhar V.K., Member (Judicial)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of AMM TEXTILES LIMITED being the "NON PETITIONER" above named ("Transferor Company No.1"or "NON PETITIONER") and BITTERLING MERCANTILE PRIVATE LIMITED being the "NON PETITIONER" above named ("Transferor Company No.2"or "NON PETITIONER") and FILBERT DEALERS PRIVATE LIMITED being the "NON PETITIONER" above named ("Transferor Company No.3 "or "NON PETITIONER") and JAGRITI COMMODITIES PRIVATE LIMITED being the Petitioner No. 2 above named ("Transferor Company No.4 "or "Petitioner No. 2 ") and KCL CHEMICALS LIMITED being the " NON PETITIONER " above named ("Transferor Company No.5 "or " NON PETITIONER ") with GOYAL EDIBLES PRIVATE LIMITED being the Petitioner No.1 above named ("Transferee Company "or "Petitioner No.1 ") with Appointed Date 01st April, 2019 in the manner and on the terms and conditions stated in the Scheme of Amalgamation ("Scheme").

2. The Transferor Company No.1, Transferor Company No.2, Transferor Company No.3 and Transferor Company No.5 are all Non-Petitioners as the registered

office is situated in the state of West Bengal and are outside the jurisdiction of this Bench.

3. The Petition has now come up for final hearing. Counsel for the Applicants submits as follows: -

(a) The Scheme was approved by the respective Board of Directors of the Transferee Company and Transferor Companies at their meetings held on 18th day of February, 2020.

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows: -

i) The TRANSFEREE COMPANY is engaged in manufacturing and trading of food grains inter alia it has also deployed its surplus fund by way of advance. The TRANSFEROR COMPANY NO.1, 4 and 5 are engaged in trading of food grains and have also deployed their surplus fund which is not immediately required in other investable instruments. Apart from pursuing its main objects, the TRANSFEROR COMPANY NO.2 and 3 have deployed their surplus funds which is not immediately required in other investable instruments. The business of the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY can be combined/ adjusted and carried forward conveniently with combined strength;

ii) The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;

iii) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;

iv) The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;

v) The business of the Company can be conveniently and advantageously combined together and in general business of the Company concerned and will be carried on more economically and profitably under the said Scheme;

vi) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Company for raising capital, securing and conducting trade on favorable terms and other benefits;

vii) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;

viii) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;

ix) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

x) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

xi) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

(c) The Statutory Auditors of the Petitioner No.1 have by their certificate dated 27th July, 2020 and the Statutory Auditors of the Petitioner No.2 have by their certificate dated 18th July, 2020 confirmed that the accounting treatment in the Scheme which provides for amalgamation of Transferor Companies with the Transfer Company is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.Further the Statutory Auditors of the Transferor Company No.1 have by their certificate dated 18th July, 2020, the Statutory Auditors of the Transferor Company No.2 have by their certificate dated 27th July, 2020, the Statutory Auditors of the Transferor Company No.3 have by their certificate dated 27th July, 2020 and the Statutory Auditors of the Transferor Company No.5 have by their certificate dated 18th July, 2020 confirmed that the accounting treatment in the Scheme which provides for amalgamation of Transferor Companies with the Transferee Company is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Transferee Company and Transferor Companies.

(e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report dated 15-02-2020 Of Anil Kumar Gupta, IBBI, Registered Valuer.

4. By an order dated 3rd March, 2021 in CA (CAA) No.01/ALD/2021, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) [read with Section 232(1) of the Act]:-

(i) Meeting(s) dispensed:

Equity Shareholders, Secured Creditors and Unsecured Creditors

Meeting of Equity Shareholders, Secured Creditors of Petitioner No.1 and Unsecured Creditors of Petitioner No.1 of the Petitioner Companies for considering the Scheme of Amalgamation are dispensed with in view of shareholders, secured Creditors and unsecured creditors of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

(ii) Meeting(s) directed to be held: No meetings were directed to be held.

(iii) No requirement of Meeting(s): Secured Creditors of Petitioner No.2 - NIL Secured Creditors verified by Auditors Certificate and Unsecured Creditors of the Petitioner No.2 – NIL Unsecured Creditors verified by Auditors Certificate.

5. Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 25th August, 2021 the instant petition was admitted by this Tribunal and fixed for hearing on 06th October, 2021 upon issuance of notices to the Statutory/Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 25th August, 2021 the Petitioners have duly served such notices on the Regulatory Authorities, viz., Upon Income Tax Authorities on 06th September, 2021 and 07th September, 2021, Upon Registrar of Companies , Kanpur ,Uttar Pradesh on 15th September, 2021 and Regional Director, Northern Region on 15th September, 2021, Upon Official Liquidator , High Court Allahabad on 15th September, 2021.The Petitioners have also published such advertisements once each in the "Financial Express" (Lucknow Edition) and "Dainik Jagran" (Gorakhpur Edition) in their respective issues dated on 25th September, 2021. An affidavit of Compliance duly affirmed on 04th October, 2021 has also been filed.

6. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

7. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, New Delhi ("RD"), Official Liquidator, High Court, Allahabad have filed their representations before this Tribunal.

8. The Official Liquidator, High Court, Allahabad has filed his report dated 07/01/2022 and concluded as under: -

At Para 27

That the Official Liquidator scrutinized Statutory records and other documents/ papers of Jagriti Commodities Private Limited (Transferor Company) produced by Shri N. Gurumurthy, Practicing Chartered Accountants/Authorized Representative of the Transferor Company and it appears that the affairs of the said Transferor Company as such have not been conducted in a manner prejudicial to the interest of their members or to public interest.

9. The RD, Northern Region has filed his reply affidavit dated 09th March, 2022 ("RD affidavit") which has been dealt with by the Petitioners by their Rejoinder affidavit

dated 14th March, 2022 ("Rejoinder"). The observations of the RD and responses of the Petitioners are summarised as under:-

Paragraph No.11 of RD Affidavit

As Per the contents of the Scheme and on examination of the reply of the Petitioner Transferor Company it is found that substantial paid up share capital is held by the Non Petitioner Transferor No.1 & 5 (out of total paid up capital 4,12,000 no. of equity share of Rs 10/ - each, both the Non – Petitioner Transferor Company hold 4,11,400 no. of equity share of Rs 10/- each which constitutes 99.76% of the total paid –up share capital) as on the Appointed Date. As per the Balance Sheet as at 31-03-2020 of the Petitioner Transferor Company – 4 it is found that it has No business activities rather a substantial amount of its net worth is shown as Loans and Advances and also Revenue from those Loans and Advances has been shown as NIL (out of the total net worth of Rs 2009.92/- lakhs, Long Term Loans and Advances have been shown as Rs 2006.29/- lakhs. Since the above net worth of the Petitioner Transferor Company is constituted mostly in financial assets, these fall under the ambit of activities of Non-Banking Financial Companies (NBFC's). Therefore, it is prayed before the Hon'ble Tribunal to obtain view of the Reserve Bank of India in this regard for considering sanction of the Scheme.

Paragraph No.11 of Rejoinder

The observations made by the Regional Director in his report in Paragraph 1 to Paragraph 10 are mere informative in nature to the Bench all drawn from the documents submitted and has no adverse observation calling for reply by the Petitioners.

As regards shareholding of the Petitioner Transferor Company, the fact has been disclosed in the Scheme by the Petitioner Companies themselves under Part II definition of Share Capital in Paragraph 2(d). Thus the said observation is informative in nature by the Regional Director to the Bench. Hence the Petitioners have nothing to reply in this regard.

The Petitioner Transferor was engaged in trading of food grains during the last 2 years prior to 31st March, 2020. However, during the financial year 2019-2020 it did not undertake any business activities in food grains as it did not find the same much profitable considering the effort involved. Since the Company is involved in trading of food grains and has No financial income it does not meet the financial income test set by RBI for classifying a Company as NBFC Company.

Out of ☐ 2009.92 lakh given by the Petitioner Transferor Company as advance, ☐ 1997.79 lakh alone has been given to the Petitioner Transferee Company to meet business exigencies. The same will be squared off once the Scheme is sanctioned by the Hon'ble Tribunal as the Scheme squarely provides for cancellation of Inter-Party Transactions.

Further, in order to classify a company as a NBFC Company two tests need to prima facie be satisfied – a) its Financial Income has to be more than 50% of its Total Income b) its Financial Assets must be more than 50% of its Total Assets. In the instant case even though the Company meets the test (b) it fails to meet the test at

(a) for the year ended 31-03-2020, accordingly the Company cannot be classified as NBFC Company.

Further the Reserve Bank of India has also made it clear that if a Company carries on NBFC activities without having a valid Certificate of Registration, the Bank has given option to such Company to adopt any one among the following – to merge with a NBFC Company, to merge with any non-NBFC Company, to apply to the Bank for issuance of Certificate of Registration. Since the Petitioner Transferor Company is merging with Petitioner Transferee Company which is a non-NBFC Company engaged in the manufacturing of edible oils and having a turnover of Rs 5.52 Crore as on 31-03-2020. Hence, the Transferor Company cannot be classified as NBFC Company to be referred to RBI.

Copy of the letter issued by the Reserve Bank of India is annexed marked – ANNEXURE – B

10. Heard submissions made by the Ld Counsel appearing for the Petitioner, the RD, Northern Region, the Official Liquidator, Allahabad. Upon perusing the records and documents in the instant proceedings and the order passed by the Kolkata Bench of this Tribunal in CP (CAA) No.59/KB/2021 and considering the submissions, we allow the petition and make the following orders:-

a. The Scheme of Amalgamation mentioned in this Petition being Annexure ‘A’ hereto be sanctioned by this Tribunal with the Appointed Date fixed as 1st day of April, 2019 on the petitioner companies and their shareholders and all concerned;

b. All the properties, rights and interest of the respective petitioner companies be transferred to and vested in without further act or deed in transferee company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, be transferred to and vested in TRANSFEREE COMPANY for all the estate and interest of TRANSFEROR COMPANIES but subject nevertheless to all charges, now affecting the same;

c. All the liabilities and duties of TRANSFEROR COMPANIES be transferred without further act or deed to TRANSFEREE COMPANY and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, be transferred to and become the liabilities and duties of TRANSFEREE COMPANY;

d. That all the proceedings and/or suit appeals now pending by or against TRANSFEROR COMPANIES shall be continued by or against TRANSFEREE COMPANY;

e. The schedule of assets in respect of TRANSFEROR COMPANIES be filed within a period of 60 days from the date of the order to be made herein;

f. The TRANSFEROR COMPANIES shall stand dissolved from the Effective Date;

g. The TRANSFEREE COMPANY and TRANSFEROR COMPANIES shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, having jurisdiction over the respective Petitioner Companies;

h. Orders passed by the Bench having jurisdiction over the Transferor Company No.1, Transferor Company No.2, Transferor Company No.3 and Transferor Company No.5 prior to sanctioning and confirmation of the Scheme by this Bench shall become operative on and from the date of this order as if the said order of that Bench is an extension of the order of this Bench;

i. Any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;

11. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

12. CP (CAA) No.29/ALD/2021 connected with CA (CAA) No.01/ALD/2021 is disposed of accordingly.

13. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

