(2023) 01 NCLT CK 0026

In the National Company Law Tribunal

Case No : C.P.(CAA)/43/MB-IV/2022 Connected with C.A.(CAA)/63/MB-IV/2021

?GS Engineering and Construction Delhi Private Limited Vs

Date of Decision : 13-01-2023

Acts Referred:
Companies Act, 2013 — Section 230, 232, 232(3)(i)

Citation : (2023) 01 NCLT CK 0026

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rupa Sutar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Judicial)

1. The Bench is conveyed through videoconference.

2. Heard the Ld. Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the said Scheme.

3. The sanction from the Tribunal is sought under Sections 232 read with Section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of GS Engineering and Construction Delhi Private Limited (Transferor Company) with GS Engineering & Construction Mumbai Private Limited (Transferee Company) and their respective shareholders and creditors.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution dated 25th February, 2021 which is annexed to the Company Petition.

5. The Ld. Counsel appearing on behalf of the Petitioner Companies state that the Petition has been filed in consonance with the Order dated 18.11.2021 passed in C.A.(CAA) 63/MB-IV/2021 by this Bench.

6. The Ld. Counsel appearing on behalf of the Petitioner Companies further state that the Petitioner Companies have complied all the directions in C.A.(CAA) 63/ MB-IV/2021 by this Bench and they have also filed necessary affidavits of compliance before this Tribunal.

7. The Ld. Counsel for the Petitioner Companies state that the Transferor Company is presently carrying on business of providing Engineering and Consultancy Services relating to designs of plants in different industries and the Transferee Company is presently carrying on the business of Providing Engineering and Consultancy Services involved in design, procurement, construction and commissioning of plants in different industries.

8. This Scheme provides for the amalgamation as a measure of consolidation of the group entities. It is further submitted that the Amalgamation of the Petitioner Companies will simplify the management structure, leading to better administration and reduction in costs resulting from synergies of operational efforts, standardization and simplification of business process and shall result in the following benefits:

a. It would result in a simple corporate structure.

b. Greater efficiency in cash management of the Transferee Company, and access to cash flow generated by the combined business.

c. It would provide synergistic linkages besides economies in costs and other benefits resulting from the economies of scale, by combining the businesses and operations of the Transferor Company and the Transferee Company.

d. Cost savings through legal entity consolidation and standardization of support teams, reduction in overheads, administrative, managerial and other expenditure, elimination of intra-group transactions, vendor or contracts consolidation etc.

e. It will be conducive to better and more efficient & effective conduct of business and operations of the Transferee Company, by utilizing the financial resources, managerial, technical, and marketing and services delivery capabilities of Transferor Company.

9. The Regional Director has filed his Report dated 27th May, 2022 making certain observations and the same have been addressed by the Petitioner Companies in the following manner: -

a. the Transferee Company undertakes that in addition to compliance of AS-14 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable.

b. the Petitioner Companies have served notices to the concerned authorities which are likely to be affected by Amalgamation and binds itself with the decision of such authorities.

c. the setting off of fees paid by the Transferee Company on its Authorized Share Capital shall be in accordance with provisions of section 232(3)(i) of Companies Act, 2013.

d. the Petitioner Companies undertakes that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made.

e. the Petitioner Companies will comply with the requirements as to Appointed Date and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.

f. the surplus / deficit shall be adjusted to Capital Reserve Account arising out of amalgamation and the said reserve shall not be available for distribution of dividend.

g. the interest of creditors will be protected by the Transferee Company.

h. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

i. The Transferee Company will comply with FEMA and RBI provisions in relation to Transferor Company's Non-Resident shareholders, if any.

10. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

11. The Official Liquidator has filed its report on 2nd February, 2022 in the C.A. (CAA) 63/MB-IV/2021, inter alia, stating therein that the affairs of the Transferor Company has been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.

12. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

14. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA) 43/MB-IV/2022 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition.

15. The Transferor Company will be dissolved.

16. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Company, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.

17. The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

18. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.

19. The Appointed Date is 1st April 2021.

20. Ordered Accordingly. Pronounced in open court today.