(2020) 09 NCLT CK 0014

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (CAA)-48(ND) Of 2020 In Company Application No. CA(CAA)-36(ND) Of 2020

Guddu Investments (Delhi) Private Limited Vs

Date of Decision : 30-09-2020

Acts Referred:

Companies Act, 2013 — Section 230, 231, 232, 232(4)
Reserve Bank Of India Act, 1934 — Section 45(IA)
Income-Tax Act, 1961 — Section 72A

Citation : (2020) 09 NCLT CK 0014

Hon'ble Judges : Mohd. Sharief Tariq, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Rajeev Kumar, Easha Kadian, Tania Sharma

Final Decision : Disposed Of

Judgement

L. N. Gupta, Member (T)

1. The present Petition has been preferred jointly by the Transferor and Transferee Companies 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, 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 are given below :

2. That Guddu Investments (Delhi) Private Limired, (hereinafter referred to as ("Petitioner-1 /Transferor Company-1") was incorporated on the 24th day of November 2008 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi110065 with CIN number U65923DL2008PTC185182.

3. That Slocum Infrastructure Private Limited, (hereinafter referred to as ("Petitioner-2"/"Transferor Company-2") was incorporated on the 13th day of December 2012 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi

-110065 with CIN number U70102DL2012PTC246146.

4. That Slocum Infrastructure Private Limited, (hereinafter referred to as ("Petitioner-2"/"Transferor Company-2") was incorporated on the 13th day of December 2012 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi -110065 with CIN numberU70102DL2012PTC246146.

5. That SKN Investments (Chennai) Private Limited, (hereinafter referred to as ("Petitioner-3"/"Transferor Company-3") was incorporated on the 12th day of September 2008 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi -110065 with CIN number U67190DL2008PTC183199.

6. That Shiv Nadar Investments (Delhi) Private Limited, (hereinafter referred to as ("Petitioner-4"/"Transferor Company-4") was incorporated on the 24th day of November 2008 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi -110065.with CIN number U65923DL2008PTC185181.

7. That Shiv Nadar Investments (Pondi) Private Limited, (hereinafter referred to as ("Petitioner-5"/"'Transferor Company-5") was incorporated on the 30th da-y of September 2008 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi -110065 with CIN number U65190DL2008P'FC183838.

8. That HCL Talentcare Private Limited, (hereinafter referred to as "HCL ("Petitioner-6"/"Transferor Company-6') was incorporated on the 23rd day of February 2011 under the provisions of the Companies Act, 1956 as a private company having its registered office at 806, Siddhartha, 96, Nehru Place, New Delhi-110019 with CIN number U74140DL2011PTC214659.

9. That Vama Sundari Investments (Chennai) Private Limited, (hereinafter referred to as ("Petitioner-7"/"Transferor Company-7") was incorporated on the 1lth day of September 2008 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi-110065 with CIN number U67190DL2008PTC183176.

10. That Slocum Investments (Pondi) Private Limited, (hereinafter referred to as ("Petitioner-8"/"Transferor Company-8") was incorporated on the 30th day of September 2008 under the provisions of the Companies Act, 1956 as a private company having its Registered Office at 44, Friends Colony (East), New Delhi -110065 with CIN number U65190DL2008PTC183850.

11. That the HCL Corporation Private Limited, (hereinafter referred to as (Petitioner-9"/"Transferee Company") was incorporated on the 30th day of September 2008 under the provisions of the Companies Act, 1956 as a private company having its registered office at 44, Friends Colony (East), New Delhi -110065. The HCL Corporation received a Certificate of Registration from the RBI

under Section 45-IA of the Reserve Bank of India Act, 1934 to carry on the business of a Non-Banking Financial Institution without acceptance of public deposits with CIN number U74120DL2008PTC183849.

12. 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 office of all the Companies being in Delhi, the jurisdiction lies with this Bench.

13. It is submitted by the Petitioner Companies that since all the Transferor Companies are the wholly owned subsidiaries of Transferee Company, no shares are required to be issued as part of the Scheme.

14. From the records, it is seen that the First Motion petition was filed by the Petitioner Companies for seeking directions for dispensing the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of both the Companies. This Tribunal, in the First Motion bearing No. CA(CAA) No. 36 (ND) 2020, vide Order dated 19.2.2020, dispensed with the requirement of convening the meetings of the equity shareholders, secured creditors and unsecured creditors of all the companies.

15. The Appointed date as fixed for the Proposed Scheme of Amalgamation is 01st April, 2020.

16. 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 86 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 directions were issued vide Order dated 01.06.2020 of this Tribunal, requiring all the Companies to serve notices to the Central Government, Registrar of Companies NCT of Delhi 86 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.

17. 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 15.06.2020 in both Business Standard (English) and Business Standard (Hindi). It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities.

18. It is submitted by the Petitioner Companies that the Official Liquidator has filed its report dated 27.07.2020, in which it has stated that it has not received any complaint against the proposed Scheme of Amalgamation from any person/

party interested in the Scheme in any manner and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public.

19. In response to the notices issued in the petition, Regional Director, Northern Region. Ministry of Corporate Affairs has filed its report dated 30.07.2020 and raised the following objections, whose reply was filed by the Petitioner Companies. The details of the objection-wise replies are reproduced below:

20. That as per direction of the RD, the Petitioner Companies have filed their Balance Sheet and Annual Return for the Financial Year 2019-20. Therefore, we are of the view that the objections raised by the RD are duly satisfied. Further, the Petitioner Companies have obtained and placed on record the approval of the RBI dated 17.08.2020. The copy of the RBI approval dated 17.08.2020 is reproduced overleaf:

21. That the Income Tax Department has filed its report on 02.07.2020 and raised the following objections, replies to which as given by the Petitioner Companies are reproduced below :

22. That the Petitioner Companies have given satisfactory reply to the observations of the IT Department.

23. 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 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 Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

24. 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.

25. 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.

26. 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.1 to 8 shall stand dissolved without undergoing the process of winding up.

(ii) 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 Entry 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;

(iii) 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;

(iv) 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;

(v) 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.

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

27. 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.

28. The Company Petition stands disposed of in the above terms.