(2022) 09 NCLT CK 0036

In the National Company Law Tribunal

Case No : CA (CAA) No. 42/Chd/J&K/2022

Gupta Car Clinic Private Limited Vs

Date of Decision : 08-09-2022

Acts Referred:

Companies Act, 2013 — Section 133, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 230(2)(b), 230(2)(c), 232
Companies Act, 1956 — Section 235, 236,237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 397, 398

Citation : (2022) 09 NCLT CK 0036

Hon'ble Judges : Harnam Singh Thakur, Member, (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Nahush Jain

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint first motion application filed by the Applicant Companies namely: Gupta Car Clinic Private Limited (Transferor Company/ Applicant Company No. 1) and Gupta Spares Industries Private Limited (Transferee Company/ Applicant Company No. 2) under Sections 230-232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure-1 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies.

3. The Applicant Company No. 1 is presently engaged in the business of automobile services.

4. The Applicant Company No. 2 is presently engaged in the business of distributorship of spare parts of vehicles.

5. It is submitted that the registered offices of both the Applicant Companies are situated in Jammu and Kashmir. Therefore, the territorial jurisdiction of both the applicant companies' fall with this Bench.

6. The rationale of the Scheme is given below:

(i) The amalgamation/merger will enable the companies to pool their resources. The proposed amalgamation will result in consolidation of the business and resources of the Transferor Company with the business of the Transferee Company.

(ii) The amalgamated entity will provide strategic and competitive advantage due to its increased size and integration of the businesses and resources;

(iii) The amalgamation will result in economies of scale;

(iv) The amalgamation/merger will provide the Companies with the resources to invest in Transferee Company and provide long-term profitable growth to the shareholder. With the increase in competition and squeezing margins, more investment will be needed in the Transferee Company.

(v) The amalgamated/merged company will have better financial and business prospects. The scheme shall be beneficial and will be in public interest, as it will immediately provide strength to the Transferee Company on its merger with the Transferor Company.

(vi) It would be advantageous to combine the activities of the Companies involved in the amalgamation/merger into a single company. The amalgamation would provide synergistic linkages, besides reduction in costs by combining the total business functions and the related activities and thus contribute to the profitability of the amalgamated company.

(vii) A larger growing company will mean enhanced financial and growth prospects for the people and organization connected with the company, and will be in public interest.

(viii) It will be conducive for better and more efficient and economical control and business and financial conduct of the companies.

(ix) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.

(x) There shall be a significant reduction in the multiplicity of regulatory and legal compliances/ filings including accounting, reporting requirements, statutory audit requirements, tax filings, multiple records keeping etc. other compliances and consequential reduction in administrative costs and optimal utilization of resources of all the companies.

(xi) Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.

(xii) Greater integration and greater financial strength and flexibility for the Transferee Company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.

(xiii) All the employees of the Transferor Company in service on the effective date, if any, shall become the employees of the Transferee Company on and from such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the Transferor Company as on date.

(xiv) It will also help in better tax planning and tax management. It will suffice the purpose of reducing debts by pooling of resources of the merged entities.

7. It is stated that the Board of Directors of Applicant Company No. 1 and the Applicant Company No. 2 in their respective meetings held on 11.04.2022 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are attached as Annexure A-14 and A-27 respectively, of the application.

8. The appointed date of the Scheme is 01.04.2022 as mentioned in the Part A Para 1.2 of Scheme of Amalgamation which is attached as Annexure A-1 of the application.

9. It is stated that the Applicant Companies have filed the audited Balance Sheet for the year ended on 31.03.2021 which are attached as Annexure A-5 and A-18 respectively, of the application. The applicant companies have also filed provisional balance sheets as on 31.03.2022 which are attached as Annexure A-6 and A-19 respectively, of the application.

10. It is submitted that in pursuance to Sec. 230 and Section 232 of the Companies Act, the Applicant Companies have filed certificates, dated 20.06.2022 issued by Independent Auditor of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure A-15 and A-29 respectively, of the application.

11. It is further submitted by the counsel for applicant companies that the share swap report has been submitted by Mr. Subodh Kumar, Registered Valuer, having Regn. No. IBBI/RV/05/2019/11705 (Annexure A-2 of the application). As per the report of Registered Valuer, the following share exchange ratio has been proposed:-

"15.69 equity share of Gupta Spares Industries Private Limited of face value of Rs. 10/- each fully paid up for every 01(one) equity shares of Gupta Car Clinic

Private Limited of Rs. 10/- each”

12. It is submitted that Part B, Para 10 Clause 10.1 of the Scheme [Annexure A-1 of the application] also takes care of the interests of the staff/workers and employees of the Companies.

13. It is submitted that the Scheme of Amalgamation does not intend in any manner, the reduction of share capital of the applicant companies or corporate debt restructuring of any of the Applicant Companies pursuant to Section 230(2)(b) and (c) of the Companies Act, 2013 and hence a creditor’s responsibility statement under Section 230(2)(c) are not applicable to the present case.

14. It is further submitted that there are no proceedings under Sections 235 to 251 of the Companies Act,1956 and/or Section 206 to 229 of the Companies Act,2013 pending against the Applicant Companies. No proceedings under Section 397 and 398 of the Companies Act 1956 or Section 241 of the Companies Act, 2013 have ever been instituted against the Applicant Companies. Further, there are no legal proceedings pending against the Applicant Companies, which may have any adverse impact on the Applicant Companies or the Scheme of Amalgamation.

15. It is further deposed by the authorised representative of Applicant Companies that there are no sectoral regulators applicable to the Applicant Companies, whose approval may be required for sanction of the present Scheme, except the statutory authorities, i.e. Registrar of Companies, Income Tax Authorities, Official Liquidator and the Regional Director, Northern Region. The aforesaid affidavits duly signed by the authorised representatives of applicant companies have been attached as Annexure A-30 of the application.

16. It is further submitted that there is no requirement for the Applicant Companies to apply to the Competition Commission of India (CCI) for approval as the threshold limits specified for the mergers and amalgamations i.e. value of assets being acquired, taken control of, merged or amalgamated is below the threshold limits for which CCI approval is required, i.e., assets in India of not more than Rupees three hundred and fifty crores or turnover of not more than rupees one thousand crores in India, as on the Appointed Date i.e. 1st April, 2022.

17. The applicant companies have furnished the following documents:-

(i) Proposed Scheme of Amalgamation (Annexure A-1 of the application).

(ii) The certificate of Incorporation of the Applicant Companies (Annexure A-3 and A-16, respectively of the application).

(iii) The Memorandum and Articles of Association of applicant companies. (Annexure A-4 & A-17, respectively of the Application).

(iv) List of Equity Shareholders of the Applicant Companies as on 28.02.2022 duly certified by M/s Darshan Nagpal & Associates, Chartered Accountants

(Annexure A-7 and A-20, respectively of the application) along with consent furnished by way of affidavits (Annexure A-8 and A-21, respectively of the application).

(v) List of Secured Creditors as on 28.02.2022 of the applicant companies duly certified by M/s Darshan Nagpal & Associates, Chartered Accountants (Annexure A-10 and A-23, respectively of the application) along with consent furnished by way of affidavits (Annexure A-11 and A-24, respectively of the application).

(vi) List of Unsecured Creditors as on 28.02.2022 of the applicant companies duly certified by M/s Darshan Nagpal & Associates, Chartered Accountants (Annexure A-12 and A-25, respectively of the application) along with consent furnished by way of affidavits (Annexure A-13 and A-26, respectively of the application).

(vii) Certificates of Independent Auditors to the effect that Accounting treatment proposed in the Scheme is in conformity with Section 133 of Act (Annexure A-15 and A-29, respectively of the application).

(viii) Share Swap Report (Annexure A-2 of the application).

(ix) Audited Balance Sheet as on 31.03.2021 of the Applicant companies (Annexure A-5 and 18, respectively of the application).

(x) Provisional Balance Sheet as on 31.3.2022 of the Applicant companies (Annexure A-6 and 19, respectively of the application).

(xi) Affidavit with regard to the Sectoral Regulator of the applicant companies (Annexure A-30 of the application).

18. The Transferor Company/Applicant Company No. 1 i.e. Gupta Car Clinic Private Limited, CIN: U35912JK1996PTC001551 is a private limited company with limited liability duly incorporated under provisions of the Companies Act, 1956 on 05.07.1996. The Transferee Company/Applicant Company No. 2 i.e. Gupta Spares Industries Private Limited, CIN: U74900JK2013PTC003858 is a private limited company with limited liability duly incorporated under provisions of the Companies Act, 1956 on 08.05.2013.

19. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors as follow:

Shareholders along

Creditors along with their consents

with their consents

Name of the

Applicant

No. of

No. of

Companies

No. of Equity

Consent

Consent

Consent

Secured

Unsecured

Shareholders

Given

Given

Given

Creditors

Creditors

Applicant Company

3 (Three)

100%

1(One)

100%

1 (One)

100%

No. 1

Applicant Company

3 (Three)

100%

3(Three)

100%.

5 (Five)

100%

No. 2

20. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Transferor Company/Applicant Company No. 1:

(a) The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders have been received by way of affidavits.

(b) The meeting of the Secured Creditor is dispensed with as the consent of the sole Secured Creditor has been received by way of affidavit.

(c) The meeting of the Unsecured Creditor is dispensed with as consent of the sole Unsecured Creditor has been received by way of affidavit.

II. In relation to the Transferee Company/Applicant Company No. 2:

(a) The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders have been received by way of affidavits.

(b) The meetings of the Secured Creditors are dispensed with as the consent of all the Secured Creditors have been received by way of affidavits.

(c) The meetings of the Unsecured Creditors are dispensed with as the consent of all the Unsecured Creditors have been received by way of affidavits.

21. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies, (c) the Official Liquidator and (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.