(2021) 04 NCLT CK 0049

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 45/MB.V Of 2021

Harihar Buildspace Private Limited — APPELLANT

Vs

Harihar Infrastructure Development Corporation Limited — RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Companies Act, 2013 — Section 180, 230(5)
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8

Citation : (2021) 04 NCLT CK 0049

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Ashish O. Lalpuria, Kamal Lahoty

Final Decision : Disposed Of

Judgement

,,

1. The Court convened by videoconference today.,,

2. Learned Authorised Representative for the Transferor Company and Transferee Company (Applicant Companies) states that the present Scheme,,

is an Scheme of Amalgamation of Harihar Buildspace Private Limited (â??the Transferor Companyâ??) with Harihar Infrastructure Development,,

Corporation Limited Corporation Limited (â??the Transferee Companyâ??) and their respective Shareholders.,,

3. The Learned Authorised Representative for the Applicants states that the respective Board of Directors of Transferor Company and the,,

Transferee Company at its respective Board Meeting held on 03rd February, 2021 approved the Scheme.",,

4. The Learned Authorised Representative for the Applicants states that

appointed date of Scheme of Amalgamation is 1st April, 2020.",,

5. The Learned Authorised Representative for the Applicants submit that the Transferor Company is a wholly owned Subsidiary of Transferee,,

Company.,,

6. The Learned Authorised Representative for the Applicants submit that the Transferor and Transferee Company are carrying on the business of,,

Construction and Real Estate.,,

7. The rationale for the Scheme is as under:,,

(i) Horizontal line of Business and Management: The Transferor and Transferee Company are carrying on the business of construction and real,,

estate. The Transferor Company is the Wholly-owned Subsidiary of the Transferee Company and managed by the management of Transferee,,

Company.,,

(ii) Rationalization: The proposed amalgamation shall lead to a single company with rationalized structure, greater integration, financial strength and",,

flexibility aiding in achieving economies of scale, sourcing benefits, vendor rationalization, more focused operational efforts, standardization and",,

simplification of business processes and productivity improvements.,,

(iii) Enhanced Reach: Creation of a single â??go-to-marketâ?? strategy, benefit of scale, enhanced depth and breadth of capabilities to result in",,

increased business opportunities and reduced administration and management expenses.,,

(iv) Better Positioning: Combined Company shall be better positioned to serve the market.,,

(v) Strengthening the financial position and ability to raise resources for conducting the business.,,

(vi) Consolidation of the managerial expertise of the companies involved, thereby giving additional strength to the operations and management of the",,

Transferee Company post-amalgamation.,,

(vii) Elimination of duplication in administrative cost and multiple records keeping thus resulting in cost savings for the Companies.,,

8. The Applicant Company 1 / Transferor Company has 7 equity shareholders. All of them have given their consent to the Scheme by way of,,

Affidavits. These are placed at p. 195-208 of the Application. In view of this, the meeting of the equity shareholders of the Transferor Company is",,

dispensed with.,,

9. The Applicant Company 2 / Transferee Company has 11 equity shareholders. All of them have given their consent to the Scheme by way of,,

Affidavits. These are placed at p. 211-233 of the Application. In view of this, the meeting of the equity shareholders of the Transferee Company is",,

dispensed with.,,

10. There are 5 (Five) Unsecured Creditors in the Transferor Company with a total outstanding amount of Rs. 10,07,57,052/- (Rupees Ten Crore",,

Seven Lacs Fifty Seven Thousand Fifty Two Only) as on 31st December, 2020. The details of the same have been placed at p. 235 of the",,

Application. Since the present Scheme does not involve an arrangement with creditors and there will be no diminution of the liability of the Applicant,,

Company 1/Transferor Company towards the said unsecured creditors, meeting of the Unsecured Creditors of the Applicant Company No. 1/",,

Transferor Company be dispensed with. However, individual notice to the said Unsecured Creditors shall be issued by the Applicant Company",,

1/Transferor Company enclosing a copy of the Scheme by Registered Post A/D or Speed Post or Courier or email and file an affidavit to that effect,",,

and clearly indicating therein that in case of any objections, they shall file the same before this Tribunal within thirty days from the date of receipt of",,

the letters.,,

11. That Learned Authorised Representative for the Applicant Companies submits that there are no Secured Creditors in the Transferor Company.,,

12. The Applicant Companies submit that:,,

a) Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to",,

the merger. Accordingly, the rights of members of the Transferee Company are not affected since there will be no issue of shares pursuant to the",,

Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in",,

any dilution in shareholding of the shareholders of the Transferee Company;,,

b) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the,, Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and",,

will continue to remain highly positive post-merger;,,

c) The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to,,

the Scheme;,,

d) No undertaking of the Transferor Company is being parted away or being disposed-off and hence provisions of section 180 of the Companies Act,",,

2013 are also not applicable.,,

13. The Authorised Representative for the Transferee Company submits that in view of above, no reconstruction or arrangement happens with its",,

Name of Company,PAN,Income Tax Jurisdiction

Transferor Company,AAFCM2149G,"Ward 10(1)(1),Mumbai/ Aayakar

Bhawan, Mumbai

Transferee Company,AABCH9888H,"DCIT/ACIT Circle-1, Mecl

Building, Nagpur

