(2024) 04 NCLT CK 0026

In the National Company Law Tribunal

Case No : C.P.(CAA)/292/MB/2023 In C.A.(CAA)/207/MB/2022

Harvard Global Logistics Limited Vs

Date of Decision : 10-04-2024

Acts Referred:
Companies Act, 2013 — Section 230, 232

Citation : (2024) 04 NCLT CK 0026

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar, Hemant Sethi & Co, Tushar Wagh

Final Decision : Disposed Of

Judgement

1. Heard the learned Counsel for the Petitioners and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petition, except otherwise stated hereunder.

2. The sanction of the Tribunal is sought under sections 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Merger by Absorption of Harvard Global Logistics Limited ('First Transferor Company') and Swastik Moving and Storage Private Limited (Second Transferor Company') with Millenium Builders and Developers Private Limited ('Transferee Company') and their Respective Shareholders.

3. The First Petitioner Company is engaged in the business of carrier of good and services, the Second Petitioner Company owns, operates, and runs carriers business and the Third Petitioner Company is engaged in the development and construction activities.

4. The Counsel for the Petitioner Companies submits that the proposed Scheme of Merger by Absorption was approved by the Board of Directors of the respective Petitioner Companies on 18th July 2022. The Board of Directors of the

respective Petitioner Company believe that the Scheme is in the best interests of the respective entities and their respective stakeholders including its shareholders, employees, and creditors. The Appointed Date for the Scheme of Merger by Absorption is 1st day of April 2022.

5. The Petitioner Companies states that the Joint Company Petition have been filed in consonance with the order dated 16 June 2023, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/207/MB/2022.

6. The Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted by the Petitioner Companies.

7. The sanction of this Scheme of Merger by Absorption the Petitioner Companies will be able to achieve the following:

· Consolidation of businesses of the group.

· Integration and efficiency of operations, economies of scale and financial position.

· Focused management

· Reduction of overheads including administrative, managerial, and other expenditure, optimal utilization of resources.

· Reduction of operating and administrative costs; and

· Greater financial strength and flexibility for the merged entity.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 04.01.2024 making certain observations ("Report"). The Petitioner Companies have submitted/undertaken that:

a. The Transferee Company will pass such accounting entries in compliance with applicable Indian GAAP;

b. The Company Application C.A.(CAA)/207(MB)/2022 has been filed with the Tribunal on 16th August 2022 which is within one year from the appointed date of 1st April 2022 for Petitioner Companies.

c. The appointed date is not ante-dated beyond a year at the time of filing the NCLT application;

d. The fees already paid by the Transferor Companies on their authorized capital, shall be paid by the Transferee Company on the increased authorized capital subsequent to the amalgamation;

e. The necessary remaining fee and stamp duty, if any, after setting-off of the fees already paid by the Transferor Companies on their authorized capital, shall be paid by the Transferee Company on the increased authorized capital subsequent to the amalgamation;

f. The Petitioner Companies state that, in case of securities premium of INR 63.03 crores appearing in the books of Transferor Company 2, the increase in share capital was assessed to tax appropriately by the Income-tax Department in the hands of Harish Logistics Private Limited (which was subsequently merged with and into Transferor Company 2) and that there are no pending tax assessments at present in this regard;

g. That no inquiry, inspection, investigation, prosecution & compliance under Companies Act, 2013 is pending against the Petitioner Companies;

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 rights of the creditors will not be affected as the assets of the Transferee Company post sanctioning the Scheme will be sufficient to pay off all the creditors in the ordinary course of business.

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

10. The Official Liquidator has filed his report on 26th February 2024, inter alia, stating that the affairs of the Transferor Companies have been conducted in a proper manner. Therefore, the representation of the Official Liquidator may be taken on record by this Tribunal.

11. The clarifications and undertaking given by the Petitioner Companies in paragraph 8 herein above are taken on record by this Tribunal.

12. Upon coming into effect of this Scheme and Merger of First and Second Petitioner Company with Third Petitioner Company in terms of this Scheme, Third Petitioner Company shall, following such transfer and vesting of the Undertaking of First and Second Petitioner Company, without any further application, act, instrument or deed, issue and allot to the equity shareholders of the First and Second Petitioner Company whose names are recorded in the register of members as member of the First and Second Petitioner Company on the Record Date, or to such of their respective, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Transferee Company, fully paid up 0.01%, Series B Non-Cumulative Redeemable Preference Shares of INR 10/- each to shareholders of Transferor Company 1 and 0.01%, Series A Non-Cumulative Redeemable Preference Shares of INR 1000/- each to shareholders of Transferor Company 2, free and clear from all encumbrances together with all rights and benefits attaching thereto in the following ratio:

First Petitioner Company

"2 (Two) fully paid-up 0.01%, Series B Non-Cumulative Redeemable Preference Shares of INR 10/- each of Transferee Company (MBDPL) for every 1 (One) fully paid-up equity share of INR 10/- each held in the Transferor Company 1 (HGLL)."

Second Petitioner Company

"1 (One) fully paid-up 0.01%, Series A Non-Cumulative Redeemable Preference Shares of INR 1000/- each of Transferee Company (MBDPL) for every 1 (One) fully paid-up equity share of INR 10/- each held in the Transferor Company 2 (SMSPL)."

13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/292/MB/2023 filed by the Petitioner Companies are made absolute in terms of prayers clause of the said Company Scheme Petition.

14. 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.

15. The Scheme of Merger by Absorption is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st day of April 2022. The Transferor Companies shall be dissolved without winding up.

16. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28 in addition to physical copy, within 30 days from the date of receipt of order, duly certified by the Designated Registrar of this Tribunal.

17. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.

18. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.