(2022) 10 NCLT CK 0018

In the National Company Law Tribunal

Case No : C.A. (CAA)/ 217 (MB) 2022

HDFC Property Ventures Limited Vs

Date of Decision : 14-10-2022

Acts Referred:

Companies Act, 2013 — Section 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 3

Citation : (2022) 10 NCLT CK 0018

Hon'ble Judges : P. N. Deshmukh (Retd.), Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Sandeep Singhi, Jayesh Desai, Manav Shroff

Final Decision : Disposed Of

Judgement

P.N. Deshmukh, Member Judicial

1. The Bench is convened through video conference.

2. This joint Company Scheme Application is filed by HDFC Property Ventures Limited (hereinafter referred to as the "First Transferor Company" or the "Applicant No. 1", as the context may admit), HDFC Venture Capital Limited (hereinafter referred to as the "Second Transferor Company" or the "Applicant No. 2", as the context may admit), HDFC Capital Advisors Limited (hereinafter referred to as the "Transferee Company" or the "Applicant No. 3", as the context may admit) seeking, inter alia, the following:

(a) dispensation of the meeting of the Equity Shareholders of the First Transferor Company/Applicant No. 1;

(b) dispensation of the meeting of the sole Secured Creditor of the First Transferor Company/Applicant No. 1;

(c) dispensation of the meeting of the Equity Shareholders of the Second Transferor Company/Applicant No. 2;

(d) dispensation of the meeting of the Equity Shareholders of the Transferee

Company/Applicant No. 3;

in respect of the arrangement embodied in the scheme of amalgamation of the First Transferor Company/Applicant No. 1 and the Second Transferor Company/ Applicant No. 2 with the Transferee Company/Applicant No. 3 (hereinafter referred to as the "Scheme"), pursuant to the provisions of Sections 230-232, and other relevant provisions of the Companies Act, 2013 (hereinafter referred to as the "Act") read with Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (herein after referred to as the "Rules") (The First Transferor Company/Applicant No. 1 and the Second Transferor Company/ Applicant No. 2 are hereinafter collectively referred to as the "Transferor Companies") (The Transferor Companies and the Transferee Company/Applicant No. 3 are hereinafter collectively referred to as the "Applicant Companies").

3. Ld. Advocate for the Applicant Companies states that the Scheme, inter alia, provides for the amalgamation of the Transferor Companies with the Transferee Company/Applicant No. 3 and the consequent dissolution of the Transferor Companies without being wound up; issuance of New Equity Shares (as defined in the Scheme) by the Transferee Company/Applicant No. 3 to the respective equity shareholder(s) of the Transferor Companies as on the Record Date (as defined in the Scheme) in accordance with the Share Exchange Ratios (as defined in the Scheme); and merger of the authorised share capital of the respective Transferor Companies with the authorised share capital of the Transferee Company/Applicant No. 3, pursuant to Sections 230 – 232, and other applicable provisions of the Act, in the manner provided for in the Scheme, and in compliance with the provisions of the Income Tax Act, 1961.

4. The Ld. Advocate for the Applicant Companies states that the Transferor Companies are wholly-owned subsidiaries of Housing Development Finance Corporation Limited (hereinafter referred to as "HDFC") and the Transferee Company/Applicant No. 3 is a subsidiary of HDFC. HDFC holds 88.23 per cent of the paid-up share capital of the Transferee Company/Applicant No. 3.

5. Ld. Advocate for the Applicant Companies states that the First Transferor Company/Applicant No. 1 is registered with SEBI (as defined in the Scheme) as an investment adviser under the provisions of the IA Regulations (as defined in the Scheme). The First Transferor Company/Applicant No. 1 provides investment advisory services, inter-alias, to overseas asset management companies ("AMCs"). Such AMCs in turn manage offshore private equity funds that invest in companies engaged in the construction and development sector in India. The First Transferor Company/Applicant No. 1 also provides investment advisory services to HDFC Investment Trust and HDFC Investment Trust II, which are domestic trusts. The said trusts also make investments in companies engaged in construction and development sector in India. Further, the First Transferor Company/Applicant No. 1 is the investment manager of HDFC India Real Estate Fund III ("HIREF III"), which is a Category II Alternative Investment Fund registered with SEBI under AIF Regulations (as defined in the Scheme). HIREF III

has not raised any funds. Since, HIREF III is not undertaking activities as an AIF, it is in the process of winding-up and consequently, will surrender its registration, under the AIF Regulations, to SEBI.

6. Ld. Advocate for the Applicant Companies states that Second Transferor Company/Applicant No. 2 is the investment manager to HDFC Property Fund ("HPF"). HPF is registered as a venture capital fund with SEBI. HPF had two schemes, viz. (a) HDFC India Real Estate Fund; and (b) HDFC IT Corridor Fund. Both the schemes of HPF have been closed and the units of the investors have been redeemed. HPF is no longer undertaking activities as a venture capital and the same has been intimated to SEBI.

7. As regards the Transferee Company/Applicant No. 3, Ld. Advocate for the Applicant Companies states that it is the investment manager of (a) HDFC Capital Affordable Real Estate Fund 1 ("HCARE 1"); (b) HDFC Capital Affordable Real Estate Fund 2 ("HCARE 2"); (c) HDFC Capital Affordable Real Estate Fund 3, the first scheme of HDFC Capital AIF-3 ("HDFC Capital AIF-3"); and (d) HDFC Build Tech Fund ("HBT Fund"). HCARE 1, HCARE 2, HDFC Capital AIF-3 and HBT Fund are registered with SEBI as Category II Alternative Investment Funds under the provisions of the AIF Regulations. The fund objective of HCARE 1, HCARE 2 and HDFC Capital AIF-3 is to invest in affordable and mid-income residential projects in India. The fund objective of HBT Fund is to invest in entities engaged in or proposing to engage in technology related interventions in real estate and allied sectors and having technology solutions in certain identified areas. The Transferee Company/Applicant No. 3 has also launched HDFC Affordable Real Estate and Technology Program ("H@ART"), aimed at creating efficiencies and lowering costs in each part of the development cycle for a real estate project. H@ART seeks to monitor, partner and invest in real estate technology companies that drive innovation and efficiencies within the affordable housing ecosystem.

8. Ld. Advocate for the Applicant Companies states that the Board of Directors of the First Transferor Company/Applicant No. 1, the Second Transferor Company/ Applicant No. 2, and the Transferee Company/Applicant No. 3 in their respective meetings held on August 25, 2022 have approved the proposed Scheme. The respective Board Resolutions approving the Scheme for the Applicant Companies are annexed as Exhibits "L", "M", and "N" to the Joint Company Scheme Application.

9. Ld. Advocate submits that the Scheme would, inter alia, have the following benefits:

a. The amalgamation of the Transferor Companies with the Transferee Company will result in simplification, streamlining and optimization of the group structure and efficient administration.

b. The amalgamation will result in enhancement of shareholder value accruing from consolidation of business operations resulting in economies of scales, reduction in overheads including administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of resources.

c. Synergy of operations will be achieved, resulting in optimisation of the common facilities such as manpower, office space, etc. Other infrastructure could also be better utilized and duplication of facilities could be avoided resulting in optimum use of facilities.

d. The amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company.

e. The amalgamation will result in greater efficiency in cash management and unfettered access to cash flow generated by the combined business, which can be deployed more efficiently, to maximize shareholder value.

First Transferor Company/Applicant No. 1

10. Ld. Advocate for the Applicant Companies states that as set out in the joint Company Scheme Application, there are 7 (seven) Equity Shareholders of the First Transferor Company/Applicant No. 1. The list of the Equity Shareholders of the First Transferor Company/Applicant No. 1 is produced at Exhibit "U". The First Transferor Company/Applicant No. 1 has already filed the original affidavits of its Equity Shareholders giving their consent to the proposed Scheme and the same are produced at Exhibit "V (Colly)". It is under these circumstances that the First Transferor Company/Applicant No. 1 prays for direction from this Tribunal for dispensing with publishing of an advertisement and convening and holding of the meeting of the Equity Shareholders of the First Transferor Company/Applicant No. 1.

11. Accordingly, in view of the aforesaid consent affidavits of the Equity Shareholders of the First Transferor Company/Applicant No. 1, the meeting of the Equity Shareholders of the First Transferor Company/Applicant No. 1, for the purpose of considering and if thought fit, approving with or without modification(s), the Scheme, is dispensed with.

12. It is further stated by the Ld. Advocate for the Applicant Companies that as set out in the joint Company Scheme Application, there is 1 (one) Secured Creditor of the First Transferor Company/Applicant No. 1. The list of the sole Secured Creditor of the First Transferor Company/Applicant No. 1 is produced at Exhibit "W". The First Transferor Company/Applicant No. 1 has already filed the original affidavit of its sole Secured Creditor giving its consent to the proposed Scheme and the same is produced at Exhibit "X". It is under these circumstances that the First Transferor Company/Applicant No. 1 prays for direction from this Tribunal for dispensing with publishing of an advertisement and convening and holding of the meeting of the sole Secured Creditor of the First Transferor Company/Applicant No. 1.

13. Accordingly, in view of the aforesaid consent affidavit of the sole Secured

Creditor of the First Transferor Company/Applicant No. 1, the meeting of the sole Secured Creditor of the First Transferor Company/Applicant No. 1, for the purpose of considering and if thought fit, approving with or without modification(s), the Scheme, is dispensed with.

14. It is stated that there are no Unsecured Creditors in the First Transferor Company/Applicant No. 1. The certificate in this regard is produced at Exhibit "Y" of the joint Company Scheme Application. The question of conducting any meeting of the Unsecured Creditors of the First Transferor Company/Applicant No. 1, therefore, does not arise.

15. It is also stated that there are no Preference Shareholders in the First Transferor Company/Applicant No. 1. The certificate in this regard is produced at Exhibit "Z" of the joint Company Scheme Application. The question of conducting any meeting of the Preference Shareholders of the First Transferor Company/ Applicant No. 1, therefore, does not arise.

Transferor Company No. 2/Applicant No. 2

16. Ld. Advocate for the Applicant Companies states that as set out in the joint Company Scheme Application, there are 7 (seven) Equity Shareholders of the Second Transferor Company/Applicant No. 2. The list of the Equity Shareholders of the Second Transferor Company/Applicant No. 2 is produced at Exhibit "AA". The Second Transferor Company/Applicant No. 2 has already filed the original affidavits of its Equity Shareholders giving their consent to the proposed Scheme and the same are produced at Exhibit "BB (Colly)". It is under these circumstances that the Second Transferor Company/Applicant No. 2 prays for direction from this Tribunal for dispensing with publishing of an advertisement and convening and holding of the meeting of the Equity Shareholders of the Second Transferor Company/Applicant No. 2.

17. Accordingly, in view of the aforesaid consent affidavits of the Equity Shareholders of the Second Transferor Company/Applicant No. 2, the meeting of the Equity Shareholders of the Second Transferor Company/Applicant No. 2, for the purpose of considering and if thought fit, approving with or without modification(s), the Scheme is dispensed with.

18. It is further stated that there are no Secured Creditors in the Second Transferor Company/Applicant No. 2. The certificate in this regard is produced at Exhibit "CC" of the joint Company Scheme Application. The question of conducting any meeting of the Secured Creditors of Second Transferor Company/ Applicant No. 2, therefore, does not arise.

19. It is stated that there are no Unsecured Creditors in the Second Transferor Company/Applicant No. 2. The certificate in this regard is produced at Exhibit "DD" of the joint Company Scheme Application. The question of conducting any meeting of the Unsecured Creditors of Second Transferor Company/Applicant No. 2, therefore, does not arise.

20. It is also stated that there are no Preference Shareholders in the Second Transferor Company/Applicant No. 2. The certificate in this regard is produced at Exhibit "EE" of the joint Company Scheme Application. The question of conducting any meeting of the Preference Shareholders of Second Transferor Company/Applicant No. 2, therefore, does not arise.

Transferee Company/Applicant No. 3

21. Ld. Advocate for the Applicant Companies states that as set out in the joint Company Scheme Application, there are 8 (eight) Equity Shareholders of the Transferee Company/Applicant No. 3. The list of the Equity Shareholders of the Transferee Company/Applicant No. 3 is produced at Exhibit "FF". The Transferee Company/Applicant No. 3 has already filed the original affidavits of its Equity Shareholders giving their consent to the proposed Scheme and the same are produced at Exhibit "GG (Colly)" and at Exhibit "A" of the Additional Affidavit dated 5. 9.2022. It is under these circumstances that the Transferee Company/ Applicant No. 3 prays for direction from this Tribunal for dispensing with publishing of an advertisement and convening and holding of the meeting of the Equity Shareholders of the Transferee Company/Applicant No. 3.

22. Accordingly, in view of the aforesaid consent affidavits of the Equity Shareholders of the Transferee Company/Applicant No. 3, the meeting of the Equity Shareholders of the Transferee Company/Applicant No. 3, for the purpose of considering and if thought fit, approving with or without modification(s), the Scheme is dispensed with.

23. It is further stated that there are no Secured Creditors in the Transferee Company/Applicant No. 3. The certificate in this regard is produced at Exhibit "HH" of the joint Company Scheme Application. The question of conducting any meeting of the Secured Creditors of Transferee Company/Applicant No. 3, therefore, does not arise.

24. It is stated that there are no Unsecured Creditors in the Transferee Company/ Applicant No. 3. The certificate in this regard is produced at Exhibit "II" of the joint Company Scheme Application. The question of conducting any meeting of the Unsecured Creditors of Transferee Company/Applicant No. 3, therefore, does not arise.

25. It is also stated that there are no Preference Shareholders in the Transferee/ Applicant No. 3 Company. The certificate in this regard is produced at Exhibit "JJ" of the joint Company Scheme Application. The question of conducting any meeting of the Preference Shareholders of Transferee Company/Applicant No. 3, therefore, does not arise.

OTHER DIRECTIONS

26. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Rules, the First Transferor Company/Applicant No. 1 shall send the notice under Section 230 (5) of the Act to (i) Central Government through the Regional

Director, Western Region, Ministry of Corporate Affairs; (ii) Registrar of Companies, Mumbai; (iii) concerned Income-Tax Authorities; (iv) GST Authorities (v) Official Liquidator; and (vi) SEBI, stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The aforesaid authorities, who desire to make any representation under Section 230(5) of the Act, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

27. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Rules, the Second Transferor Company/Applicant No. 2 shall send the notice under Section 230 (5) of the Act to (i) Central Government through Regional Director, Western Region, Ministry of Corporate Affairs; (ii) Registrar of Companies, Mumbai; (iii) concerned Income-Tax Authorities; (iv) GST Authorities; (v) Official Liquidator; and (vi) SEBI, stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The aforesaid authorities, who desire to make any representation under Section 230(5) of the Act, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

28. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Rules, the Transferee Company/Applicant No. 3 shall send the notice under Section 230 (5) of the Act to (i) Central Government through Regional Director, Western Region, Ministry of Corporate Affairs; (ii) Registrar of Companies, Mumbai; (iii) concerned Income-Tax Authorities; (iv) GST Authorities; and (v) SEBI, stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The aforesaid authorities, who desire to make any representation under Section 230(5) of the Act, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

29. Notices to be served upon the Official Liquidator by the First Transferor Company/Applicant No. 1 and the Second Transferor Company/Applicant No. 2. If no representation/ response is received by the Tribunal from the Official Liquidator within a period of 30 (thirty) days from the date of receipt of such notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme.

30. The Applicant Companies shall file a compliance report with the Registry in regard to the directions given in this Order.