(2022) 11 NCLT CK 0027

In the National Company Law Tribunal

Case No : CP (CAA) No.25/Chd/PB/2022

Hero Cycles Limited Vs

Date of Decision : 02-11-2022

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232, 232(3)(i)

Citation : (2022) 11 NCLT CK 0027

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

Bench : Division Bench

Advocate : Munisha Gandhi, Salina Chalana, Vaibhav Gupta

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint second motion company petition filed by the Petitioner-Companies, namely, Hero Cycles Limited (Demerged Company) and Hero Motors Limited (Resulting Company) under Section 230-232 of the Companies Act, 2013 (the Act) read with Companies (compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement between the petitioner companies.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Arrangement between the respective companies. The said Scheme is attached as Annexure -1 of the petition.

3. The first motion application seeking directions for dispensing/convening with the meetings of the equity shareholders, secured and unsecured creditors of the applicant companies was filed before this Tribunal vide CA (CAA) No.40/Chd/Pb/2021 and based on such an application necessary directions were issued on 06.01.2022. As per the order dated 06.01.2022, the meetings of equity shareholders of both applicant companies and secured creditors of Resulting Company were dispensed with for the reasons recorded in the aforementioned order. It is further directed to convene the meetings of unsecured creditors of

both applicant companies and secured creditors of Demerged Company.

4. In compliance of directions issued by this Tribunal in order dated 06.01.2022, the Chairperson, Alternate Chairperson and Scrutinizer have filed their reports. As per Chairperson's Reports, all dated 08.04.2022, the resolution approving the Scheme has been unanimously passed by the secured creditors and unsecured creditors of Applicant Company No.1 in their respective meetings and by 99.71% in terms of number of unsecured creditors of Applicant Company No. 2.

5. The main objects, date of incorporation, authorized and paid-up share capital and the rationale of the Scheme have been discussed in detail in the order dated 06.01.2022.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 13.05.2022 and the same were compiled by filing affidavits vide Diary No.00704/01 dated 15.07.2022. The notice of hearing was published in "Indian Express" (English, Chandigarh Edition) and "Jagbani" (Punjabi, Ludhiana Edition), in case of Petitioner Company No.1 and "Financial Express" (English, Delhi NCR Edition) and "Jansatta" (Hindi, Delhi NCR Edition) in case of Petitioner Company No.2 on 07.07.2022 and the original copies of the newspapers are attached as Annexure-1 of the aforesaid affidavit. It has also stated in the affidavits that copies of notices were served upon the (1) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (2) The Concerned Registrar of Companies (3) The Official Liquidator attached to Punjab and Haryana High Court and (4) the jurisdictional Income TaxAuthorities, by way of speed post. Original acknowledgement receipts and postal receipts along with tracking reports evidencing service of notices are attached as Annexure-2A, 2B and 2C of the aforesaid affidavit.

7. It is deposed that the authorized signatory of the applicant companies that no objections to the proposed scheme of arrangement have been received by any of the petitioner companies from the shareholders, creditors or any other stakeholders. The aforesaid affidavits have been filed vide Diary No.00704/01 dated 19.07.2022.

8. In response to the abovementioned notices, the statutory authorities have furnished their responses.

8.1 Registrar of Companies (RoC)/Regional Director (RD)

8.1.1 The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No.00704/3 dated 28.07.2022. In the report of Regional Director, the following observations have been made at para 9 of the report:-

i. The Authorized Capital of the Transferee Company, after the Scheme becoming effective, shall be in accordance with Section 232(3)(i) of the Companies Act, 2013. As per Section 232(3)(i) of the Companies Act, 2013, the fee, if any, paid by the Transferor Company on its Authorized Capital shall be set-off against any fee payable by the Transferee Company on its authorized capital subsequent to the amalgamation accordingly.

ii. Only permanent employees, not all the employees of the demerged company, will become the employee of the Resulting Company.

iii. It is also contended that the scheme is silent about the details of Assets & Liabilities to be transferred from the De-merged Company to the Resulting Company against which consideration is recommended in the scheme. However, the petitioner companies have responded and submitted the details of assets and liabilities, which are attached as Annexure-C of the report.

8.1.2 The Petitioner Companies have replied to the observations made by the ROC/RD by Diary No.00704/4 dated 21.07.2022, wherein it has been clarified that :

i. The petitioner companies undertake to duly discharge any applicable fees payable by the Resulting Company for an increase in the authorized capital for the purpose of issuance of shares to the shareholders of the Demerged Company.

ii. The demerged company has only permanent employees that are engaged with the Demerged Company and the said Company has no temporary employees. Therefore, no prejudice is being caused to any employee by means of the scheme.

iii. The details of the Assets and Liabilities pertaining to the Demerged Undertaking of the Demerged company, proposed to be transferred to the Resulting Company, has been duly submitted along with the Scheme. And the said list of assets and liabilities is also filed as Annexure A-4 of Diary No.00704/4 dated 21.07.2022 After going through the above submissions made by the applicant, the observations of the Regional Director stand satisfied and no adverse inference is drawn against the petitioner companies.

8.2 Income Tax Department

8.2.1 The Income Tax Department filed its report by Diary Nos. 01125/9 dated 26.08.2022 and Diary No.326 Dated 25.07.2022 wherein it has been stated that demand of Rs.25,28,027/- for A.Y. 2015-16 and Rs.1,06,48,710/- for A.Y. 2020-21 is pending in respect of the Demerged Company. It is further stated in the report that there is no impact on the ability to carry forward of business losses or unabsorbed depreciation or any other benefits under the IT Act. As per Clause 11.1 of the Scheme, it is mentioned that upon the Scheme becoming effective and w.e.f. the appointed date, all the taxes and duties payable by Demerged Company relating to the demerged undertaking shall be payable by Resulting Company.

8.2.2 In any case, this Tribunal is not shutting out the legitimate interest of the income-tax authorities to recover the lawful dues payable by the petitioner companies which are not being dissolved, and the scheme provides the savings in relation to the liabilities as well, the rights of the tax authorities remain intact, and they can proceed against the companies in accordance with the law, if any amount is found due and payable.

8.3 Official Liquidator

The Official Liquidator has filed his report vide Diary No.00704/2 dated 15.07.2022. The Official Liquidator in its report has reproduced the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements.

On a perusal of the report, it is seen that the Official Liquidator has made no adverse observation against the petitioner companies.

9. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexures-8 and 9 of the petition.

10. We have heard the learned counsel for petitioner companies and learned counsel for the Income Tax Department and have perused the record carefully.

11. In the context of the above discussion, the Scheme contemplated between the petitioner companies appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Arrangement attached as Annexure -1 with the petition.

12. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

13. 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 any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

i. That all the properties, rights and powers of the Demerged Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting

Company and accordingly, the same shall, pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Resulting Company but subject nevertheless to all charges now affecting the same; and

ii. That all the liabilities and duties of the Demerged Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting Company and accordingly, the same shall, pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company; and

iii. That the Appointed Date for the scheme shall be 01.04.2021 as specified in the scheme;

iv. That the proceedings, if any, now pending by or against the Demerged Undertaking of the Demerged Company be continued by or against the Resulting Company;

v. That the employees of the Demerged Undertaking of the Demerged Company shall be transferred to the Resulting Company in terms of the 'Scheme';

vi. That the Resulting Company shall, without further application, allot to the existing members of the Demerged Company shares of Resulting Company to which they are entitled under the said Scheme;

vii. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration in the prescribed form and on such certified copy being so delivered;

14. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

15. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

16. The Company Petition CP (CAA) No.25/Chd/Pb/2022 is allowed and disposed of accordingly.

