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(2023) 06 NCLT CK 0071

In the National Company Law Tribunal

Case No : CA NO. 55/2023 & CP (CAA) No. 59/Chd/Hry/2022

High Rise Propbuild Private Limited Vs

Date of Decision : 12-06-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232, 455
Income Tax Act, 1961 — Section 170(2A)

Citation : (2023) 06 NCLT CK 0071

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

Bench : Division Bench

Advocate : Atul V Sood, Vishva Bharti Gupta, Yogesh Putney

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

CA NO. 55/2023

1. The present application is filed for placing on record the report of the Income Tax Department which are furnished in relation to the petitioner companies. The same is taken on record and CA No. 55 of 2023 is allowed and stands disposed of accordingly.

CP (CAA) No. 59/Chd/Hry/2022

2. This is a joint Second Motion Application filed by Petitioner Companies namely; High Rise Propbuild Pvt. Ltd. (Petitioner Company No.1/Transferor Company), with Roshni Builders Pvt. Ltd. (Petitioner Company No.2/Transferee Company) under Section 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 Petitioner Companies.

3. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation amongst the respective companies. The said Scheme of

Amalgamation is attached as Annexure– A1 of the petition.

4. The first motion application seeking directions for dispensing with the requirement of convening the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies of Applicant Companies were filed before this Tribunal vide Company Application No. CA (CAA) No. 29/Chd/Hry/2022 and based on such application necessary directions were issued on 03.08.2022. In the order dated 03.08.2022, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant companies were dispensed with for the reasons mentioned in the aforesaid order.

5. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme of Amalgamation had been discussed in detail in the order dated 03.08.2022.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 26.08.2022 and the same were complied with by the Petitioner Companies. The Petitioner Company has filed affidavits of service by Diary No.01864/01 dated 07.11.2022. The notice of hearing was published in newspapers namely, "Financial Express" (English, Delhi NCR Edition) and "Jansatta" (Hindi, Delhi NCR Edition) on 14.10.2022. The original copies of the newspapers are attached as Annexure- 1 to the aforesaid affidavit. It is also stated in the aforesaid affidavits that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; New Delhi (2) Concerned Registrar of Companies (3) Official Liquidator (attached to Punjab and Haryana High Court) (4) Haryana Real Estate Regulatory Authority (HRERA) (5) Jurisdictional Income Tax Authorities through the Nodal officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by way of speed post/hand delivery. Copy of acknowledgement receipts and Original speed post receipts along with tracking report are attached as Annexure – 2 of the aforesaid affidavits.

7. It is deposed by authorized signatories of the Petitioner Companies that no objection to the said scheme have been received by either of the Petitioner Companies, pursuant to the publication of notice of hearing. The aforesaid affidavits have been filed vide Diary No. 01864/2 dated 07.11.2022.

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

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

8.1.1. The Regional Director (RD) has filed its report along with the report of the Registrar of Companies (RoC), by Diary No. 01864/3 dated 13.02.2023. Para 10 of the Regional Director's report sets out observations of the Regional of Companies (ROC) as made in Clause 30 of its report dated 21.12.2022 which read as: -

? "None of the Transferor and Transferee Company have any revenue from

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operations since last two years. Therefore, it appears that the companies are dormant company u/s 455 of the Companies Act,2013.

? In the petition and annexure thereto, it has been mentioned that there is Nil secured creditors in the Transferor Company. However, as per master data of the company, there is active/open charge amounting of Rs. 400,00,00,000/- created on 08.10.2021.

? The Transferor Company in its Balance Sheet for year ended 31.03.2021 has shown other current assets amounting of Rs. 11,68,00,000 which was same for the year ended 31.03.2020, which can not be treated as current.

? Transferor Company have Other income (unwinding of finance income (IND AS Adjustment) amounting of Rs. 13,00,23,896 and Finance cost (unwinding of Finance Expense- IND AS Adjustment) amounting of Rs. 4,47,24,963 as shown in Financial Statements for year ended 31.03.2021.

? The Transferee Company in this Financial Statements for year ended 31.03.2021 has shown Misc. Income of Rs. 18,57,91,88."

8.1.2. The petitioner Companies have filed its response to the report of Registrar of Companies by letter dated 13.01.2023 (Annexure -D of RoC report) stating that as per IND AS 115, the revenue from the sale of properties are recognized only when the obligations are essentially complete as Transferor and Transferee Company are engaged in real estate. Therefore, Performance obligations are considered to be complete only when control over the properties being developed have been transferred to the ultimate buyer. Therefore, the companies are still active and conducting their operations and not dormant in terms of Section 455 of CA, 2013. It is replied by the Petitioner Companies with regard to the active charge that the Transferee Company had taken a loan from L&T Finance Ltd., for which collateral was provided by the Transferor Company and a charge was created on its land. L&T Finance Ltd. a secured creditor of the Transferee Company has already given its no objection to the said Scheme which is attached with first motion application and there were NIL secured creditors in the Transferor Company. It is further clarified by the petitioner companies that All assets and liabilities of the Transferor Company have been classified as current or noncurrent as per the company's usual operating cycle and the Transferor Company is primarily engaged in the business of development of residential and commercial complexes, multistorey buildings, apartments etc. and in this business current period cycle is 3 (three) years. Hence, the current assets amounting of Rs. 11,68,00,000/- are the same for the year ended 31.03.2020 as well as 31.03.2021. It is further stated with respect to other incomes of Transferor Company that the Transferor Company had taken security deposit and as per IND AS, the same is only an IND AS adjustment. The company has received the miscellaneous income which pertains to income received from scrap sale and towards inventory/unit cancellation charges levied by the Company.

8.1.3. Thus, no adverse observation can be inferred from the report of the

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Regional Director/Registrar of Companies.

8.2 Income Tax Department

8.2.1. The Petitioner Companies have filed an application bearing CA No. 55/2023 attaching the report of the Income Tax Department in respect of the Petitioner Companies. It has been stated in the report that the Income Tax Department has no proceeding pending and there is no outstanding demand

8.2.2. Thus, no adverse observation can be inferred from the report of the Income Tax Department with regard to the proposed Scheme of Arrangement.

8.3 Official Liquidator

8.3.1. The Official Liquidator has filed his report vide Diary No.01864/04 dated 07.02.2023. 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. It is stated that the Transferor Company will wind up without going through the process of winding up.

8.3.2. Thus, no adverse observation can be inferred from the report of Official Liquidator.

9. The petitioner companies have also served notices to Haryana Real Estate Regulatory Authority (HRERA) and Copies of notices issued are attached as Annexure-2 of Diary No.01864/01 dated 07.11.2022. However, there is no reply from the concerned authority till now. Considering the lapse of time in the matter, it is presumed that there is no objection to the proposed Scheme of Amalgamation.

10. The certificate of the statutory auditors with respect to the Scheme of Amalgamation amongst the Petitioner Companies to the effect that the accounting treatment proposed in the Scheme of Amalgamation 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 are filed as Annexures A-12 & A-13 of the petition.

11. We have heard the learned counsel for Petitioner Companies and perused the record carefully.

12. In the context of the above discussion, the Scheme of Amalgamation contemplated amongst 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 compliance have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended as Annexure “A-1” with the petition.

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13. 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.

14. While approving the Scheme of Amalgamation 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 Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee 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 Transferee Company;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company is entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts of the Transferor Company which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

v. That the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme';

vi. That the Appointed Date for the scheme shall be 01.04.2022 as specified in the scheme;

vii. That the proceedings, if any, now pending by or against the Transferor

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Company be continued by or against the Transferee Company;

viii. That the proceedings, if any, now pending by or against the Transferor Company be continued by or against the Transferee Company;

ix. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;

x. That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its combined authorized capital subsequent to the sanction of the 'Scheme';

xi. That the Transferee Company shall file the revised memorandum and articles of association with the Registrar of Companies, NCT of Delhi & Haryana for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company ;

xii. 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 Concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Company and Transferee Company shall be consolidated accordingly, as the case may be; and

xiii. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

15. 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 by the petitioners within three weeks from the date of receiving a certified copy of this order.

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

17. The Company Petition CP (CAA) No. 59/Chd/Hry/2022 is allowed and disposed of accordingly.

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