(2020) 01 NCLT CK 0054

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : CAA No. 85 (PB) Of 2019

Himtaj Builders Private Limited And Ors. APPELLANT

Vs

Latent Light Trading Private Limited RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 230(5), 231, 232, 233, 234

Citation : (2020) 01 NCLT CK 0054

Hon'ble Judges : B.S.V. Prakash Kumar, J;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Videh Vaish, M.N. Haq, Akash, Tushar Gupta, Tania Sharma, Akshay Joshi, Amish Tondon

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This Joint petition has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of both the transferor companies with the transferee company. Copy of the said Scheme of Amalgamation (hereinafter referred as "Scheme") has been placed on record.

2. The "Transferor Company No. 1", M/s. Himtaj Builders Private Limited was incorporated on 07.02.2011 under the provisions of Companies Act, 1956, having its registered office situated at 159, UGF Flat No. 4 K. No. 247/2, Chattarpur Enclave, Phase-2, New Delhi-110074.

3. The "Transferor Company No. 2", M/s. Verasity Dealers Private Limited was incorporated on 30.05.2007 under the provisions of Companies Act, 1956, having

its registered office situated at, 120, 1st Floor, Local Shopping Centre Aurbindo Place Hauz Khas South Delhi, New Delhi-110016.

4. The "Transferee Company", M/s. Latent Light Trading Private Limited was incorporated on 03.03.2011 under the provisions of Companies Act, 1956, having its registered office situated at C-3/7, Safdarjung Development Area, New Delhi-110016.

5. A perusal of the petition discloses that initially the First Motion joint application seeking dispensation from convening of the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the petitioner companies was filed before this Bench vide Company Application (CAA) No. 79/(PB)/2019 and based on such joint application moved under Sections 230 to 232 of the Companies Act, 2013, the meetings of the equity Shareholders, secured creditors and unsecured creditors of all the petitioner companies were dispensed with vide order dated 13.05.2019.

6. Thereafter, on 10.06.2019 the Petitioners were directed to carry out publication in the newspapers "Business Standard" (English, Delhi edition) and "Business Standard" (Hindi, Delhi edition). In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and to the other relevant sectoral regulators.

7. It is seen from the records that the Petitioners have filed an affidavit dated 23.08.2019 affirming compliance of the order passed by the Tribunal dated 10.06.2019. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 18.06.2019 as well as in 'Business Standard' Hindi edition on 18.06.2019 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been enclosed.

8. The Regional Director has filed its representation on 21.08.2019 in which it is stated that the transferee company and transferor companies have filed Annual Return and Balance Sheet upto 31.03.2018 and no prosecution has been filed and no inspection or investigation has been conducted in respect of the petitioner companies.

9. The Official Liquidator has filed its report wherein no material objection has been raised by them in relation to the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of both the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

10. Despite opportunity afforded to the Department of Income Tax, no reply has been filed by the Department of Income Tax till date of final hearing. It is pertinent to mention here that the Department of Income Tax should have filed their response within 30 days from the date of receipt of such notice as per the provisions of sub-section 5 of Section 230 of the Companies Act, 2013, failing which it is provided in the said Section that it shall be presumed that the authority has no representation to be made in respect of the Scheme. Therefore, inference can be taken that the Department of Income Tax has no observation against the Scheme.

11. Be that as it may, in order to protect the interest of the Revenue it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.

12. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

13. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

14. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

15. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:

A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process."

16. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

17. It has also been affirmed in the petition that Scheme is in the interest of both

the Transferor Companies and the transferee company including their shareholders, creditors, employees and all concerned.

18. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, official liquidator and in the absence of any objection against the Scheme; there appears to be no impediment in sanctioning the present Scheme.

19. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

20. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

21. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

22. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

23. THIS TRIBUNAL DO FURTHER ORDER

i. That both the Transferor Companies shall stand dissolved without following the process of winding-up; and

ii. That all the property, rights and powers of both the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company; and

iii. That all the liabilities and duties of both the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

iv. That all proceedings now pending by or against any of the Transferor Companies, be continued by or against the transferee company; and

v. That all the employees of both the Transferor Companies, in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Company on the said date.

vi. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered both the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to both the Transferor Companies registered with him on the file kept by him in relation to the Transferee Company and the files relating to all the petitioner companies shall be consolidated accordingly; and

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

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

