
(2023) 01 NCLT CK 0025

In the National Company Law Tribunal

Case No : C.P.(CAA)176/MB/2022 In C.A.(CAA)107/MB/2022

Hinduja Estates Private Limited Vs

Date of Decision : 13-01-2023

Acts Referred:

Companies Act, 2013 — Section 230, 230(1), 230(3)(i), 230(3), 230(5), 230(6), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2023) 01 NCLT CK 0025

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

Bench : Division Bench

Advocate : Parita Dave, Vidhi Dhanuka, Rupa Sutar

Final Decision : Disposed Of

Judgement

Pradeep Narhari Deshmukh, Member (Judicial)

1. The court convened through videoconferencing today.
2. Heard the Learned Advocates for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Merger by Absorption between Hinduja Estates Private Limited ("Transferor Company or Petitioner Company-1") and Hinduja Healthcare Limited ("Transferee Company or Petitioner Company-2") and their respective Shareholders.
4. The Learned Advocate for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies had approved the Scheme of Merger by Absorption with Appointed Date as April 01, 2021 vide Board Resolutions dated February 09, 2022 annexed to the Company Scheme Petition as Exhibit "F" and "G" respectively and have approached the Hon'ble Tribunal for sanction of the

Scheme.

5. The Learned Advocate for the Petitioner Companies submits that the First Petitioner Company is currently engaged in the business of property development.

6. The Learned Advocate for the Petitioner Companies submits that the Second Petitioner Company is currently engaged in the business of healthcare services.

7. The rationale of the Scheme of Merger by Absorption is as under:

1. "The Transferor Company and the Transferee Company are under the same control and management of the Hinduja Group and are subsidiaries of "Hinduja Reality Ventures Limited". As the Transferor Company and the Transferee Company are under common control, management and are in the business of infrastructure development, it is proposed to amalgamate Transferor Company with the Transferee Company pursuant to a Scheme under Sections 230 to 232 of the Act (hereinafter defined) read with applicable Rules of Companies (Compromises, Arrangements and Amalgamations), Rules 2016 and other relevant provisions of the Act.

2. The proposed corporate restructuring mechanism by way of a scheme of amalgamation is beneficial, advantageous and not prejudicial to the interest of the shareholders, creditors and other stakeholders. The proposed amalgamation of Transferor Company into Transferee Company is in consonance with the global corporate restructuring practices which intends and seeks to achieve flexibility and integration of size, scale and financial strength. The Transferor Company and the Transferee Company believe that the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Transferor Company and the Transferee Company pooled in the merged entity, will lead to increased competitive strength, cost reduction and efficiencies, productivity gains, and logistic advantages, thereby significantly contributing to future growth. Therefore, the management of the Transferor Company and the Transferee Company believe that this Scheme shall benefit the respective companies and other stakeholders of respective companies, inter-alia, on account of the following reasons:

(a) Integration of business operations and enable the Transferee Company to consolidate its business operations and provide significant impetus to its growth;

(b) Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities;

(c) Garner the benefits arising out of economies of large scale and lower operating costs;

(d) Pooling and rationalization of talents in terms of manpower, management, administration etc. to result in savings of costs;

(e) Avoidance of duplication of administrative functions, reduction in multiplicity

of legal and regulatory compliances and cost;

(f) Integrated operational and marketing strategies, inter-transfer of resources / costs will result in optimum utilization of assets;

(g) Merger will result in increase in net worth of Transferee Company, which will facilitate effective and fast mobilization of financial resources for meeting increased capital expenditure;

(h) Merger shall result in efficient and focused management control and system."

8. Upon the Scheme becoming effective, the Transferee Company shall, without any further act or deed, issue and allot to every member of the Transferor Company, Equity Shares in the Transferee Company, on a date to be fixed by the Board of Directors of the Transferee Company, in the following manner:

"9012 equity shares of the face value Rs.10/- each of the Transferee Company shall be issued and allotted as fully paid up for every 100 equity shares of the face value of Rs. 10/- each fully paid up held in Transferor Company."

9. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petition has been filed in consonance with the Order passed in the Company Scheme Application No. 107 of 2022 of the Hon'ble Tribunal.

10. The Learned Advocates appearing on behalf of the Petitioner Companies further state that the Petitioner Companies have complied with all requirements in accordance with the directions of the Hon'ble National Company Law Tribunal, Mumbai Bench and they have made requisite filings to demonstrate compliance with this Hon'ble National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.

11. The Regional Director of Western Region, Ministry of Corporate Affairs having Office at Everest Building, 100, Marine Drive, Mumbai (Maharashtra) - 400002 has filed his Report dated January 02, 2023 stating therein that save and except the observations as stated in paragraphs 2(a) to (g) of the Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their Rejoinder Affidavit dated January 02, 2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies is summarized in the table below:

Clause No.

Regional Director Report / Observations dated January 02, 2023

Response from the Petitioner Companies filed vide Rejoinder Affidavit

dated January 02, 2023

2 (a)

In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

As regards the observations made at paragraph 2 (a), the Petitioner Companies hereby undertake that in compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-5 (IND AS-8) etc. to the extent applicable.

2 (b)

As per Definition of the Scheme,

"Appointed Date" means April 01, 2021 or such other date as may be directed or approved by the National Company Law Tribunal or any other appropriate authority; and

"Effective Date" means the date on which certified copies of the order passed by the National Company Law Tribunal [NCLT] is filed with the Registrar of Companies, Maharashtra at Mumbai.

Any reference in this scheme to "upon the Scheme becoming effective" or "effectiveness of the Scheme" or "date of coming into effect of this Scheme" shall also mean the effective date.

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the Scheme under this Section shall clearly indicate an appointed date from which it shall be effective and the Scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

As regards the observations made at paragraph 2 (b), the Petitioner Companies confirm that the Appointed Date i.e. April 01, 2021 as mentioned in the Scheme is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies undertakes to comply with the requirements clarified vide

circular No.7/12/2019/CL-I

dated 21.08.2019 issued by the Ministry of Corporate Affairs. The

Petitioner Companies submit that the Company Scheme Application was filed on March 17, 2022 whereas the Appointed Date mentioned in the Scheme is April 01, 2021. The Appointed date as fixed in the Scheme precedes the date of filing of the Application and therefore, the Appointed Date is not ante dated beyond a year and hence, present Scheme is in compliance with the requirements of Circular No. F.No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

2 (c)

The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

As regards the observations made at paragraph 2 (c), the Petitioner Companies submit that there are no secured and unsecured creditors in both the Petitioner Companies. The Petitioner Companies also submit that the Scheme has been duly approved by the members of the respective Companies at their respective

meetings held on August 16, 2022 in accordance with the Order pronounced on July 15, 2022 passed in Company Scheme Application No. 107

of 2022.

2 (d)

The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regards, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.

As regards the observations made at paragraph 2 (d), the Transferee Company undertakes to comply with all applicable provisions under the Income Tax Act, 1961 to the extent applicable.

2 (e)

Petitioner company may be directed to submit an undertaking stating the name of Sectorial regulator of the petitioner company and also undertake that prior notice has been served to sectorial regulator and all requirements of the concern regulator, if any has been complied with.

As regards the observations made at paragraph 2 (e), the Petitioner Companies undertake to comply with the directions of the concerned sectoral regulator, if

applicable.

2 (f)

It is observed from MCA21 record that unlisted Transferor Company has collected Security Premium, particulars of the same are as follows –

Date of Allotment

Number of Allottees

No. of shares allotted

Minimal value per share (in Rs.)

Premium per share (in Rs.)

Total premium collected (in Rs.)

19/03/ 2013

Rabna Holdings Limited

2,50,000

10.

1200

30,00,00,000

TOTAL

2,50,000

30,00,00,000

In the view of above, if agreed, Hon'ble NCLT may ask the petitioners to clarify that Income Tax Department has properly assessed the increase of share capital from time-to-time u/s. 68 of the Income Tax Act, 1961 payment of Income Tax by existing shareholders, if they who have purchased shares at lower price than issued price from above allottees or seek the reply from Income tax department about issue of share capital at high premium on the shares or satisfied itself on the reply of the Company and consider the matters on the merits of case.

As regards the observations made at paragraph 2 (f), the Petitioner Companies submit that pursuant to the Order pronounced on July 15, 2022 passed in Company Scheme Application No. 107 of 2022, the Petitioner Companies have served notices to all concerned authorities such as the Regional Director, Registrar of Companies, Income Tax Authorities and Official Liquidator by the Petitioner Companies. No observations have been made by the Income Tax Authorities. Further, the Petitioner Companies undertake that the approval of the Scheme by this Tribunal shall not deter the regulatory authorities to deal with any issues arising after giving effect to the Scheme.

2 (g)

That on examination of the report of the Registrar of Companies, Mumbai dated 15.12.2022 (Annexed as Annexure A-1)) that all the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and for representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to 31.03.2022 further observations in ROC report are as under:-

i. That the ROC Mumbai in its report dated 15.12.2022 has stated that no Inquiry, inspection, investigation & prosecution is pending against the subject applicant

companies.

ii. It is submitted that as per the provisions of Section 230(3)(i) of the Companies Act, 2013, where the transferor company dissolved, 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 authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting-off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to the

amalgamation.

iii. The Transferor Company and Transferee Company are into Real Estate business. Hence, NOC from RERA to be obtained. If applicable.

iv. Interest of Creditors should be protected.

v. May be decided on its merits.

As regards the observations made at paragraph 2 (g) (ii), the Petitioner Companies hereby undertake and confirm that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013. Further, the Transferee Company shall pay the balance/difference amount of the fees and stamp duty on its increased Authorised Share Capital.

As regards the observations made at paragraph 2 (g) (ii), the Petitioner Companies submit that the Petitioner Companies are in the business of development and are not engaged in the business of construction as on date, and therefore, are not required to be registered under RERA and hence, the requirement to obtain NOC from RERA does not arise.

As regards the observations made at paragraph 2 (g) (iii), the

Petitioner Companies submit that there are no secured and unsecured creditors in both the Petitioner Companies.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 11 above. Ms. Rupa Sutar, Authorised Representative of the Regional Director, MCA (WR), Mumbai who is present at the time of final hearing has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection for approving the scheme by the Hon'ble Tribunal. In the light of the same, the clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.

13. The Official Liquidator has filed his Report dated September 23, 2022 inter alia stating therein that the affairs of the Transferor Company have been conducted in a proper manner.

14. From the material on record, the Scheme appears to be fair and reasonable and is neither violative of any provisions of law nor is it contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition CP (CAA) No.176/ MB/ 2022 filed by the Petitioner Companies is made absolute in terms of prayer clause 46 of the Company Scheme Petition. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is fixed as April 01, 2021.

16. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in Form INC-28 within 30 days from the date of issue of the Order by the Registry, duly certified by the Deputy/Assistant Registrar of this Tribunal.

17. The Petitioner Companies are directed to lodge a copy of this Order along with a copy of the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 working days from the date of receipt of certified copy of the certified order from the Registry of this Tribunal.

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

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

20. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

21. Ordered accordingly.