(2023) 05 NCLT CK 0059

In the National Company Law Tribunal

Case No : CP (CAA) No. 12/Chd/Hry/2022

Hitech and Associates Limited Vs

Date of Decision : 24-05-2023

Acts Referred:

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

Citation : (2023) 05 NCLT CK 0059

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

Bench : Division Bench

Advocate : Raghav Kapoor, Rohit Khanna

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint second motion application filed by Petitioner Companies namely; The Hitech and Associates Limited (Petitioner Company No.1/Transferor Company No.1), Ultimate Fincap Limited (Petitioner Company No.2/Transferor Company No.2) and The Hi-Tech Engineering Systems Private Limited (Petitioner Company No.3/Transferee Company) in relation to the Scheme of Arrangement between the petitioner companies under Section 230-232 Companies Act, 2013 (the Act) and Rule 15 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) and other applicable provisions of Compromises, Arrangements and Amalgamations Rules, 2016.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Arrangement between the respective companies. The said Scheme is attached as Annexure-A1 of the petition.

3. The Petitioner Companies have filed the first motion application bearing CA (CAA) No.51/Chd/Hry/2020 before this Tribunal for seeking directions for dispensing/convening with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies. The First Motion Application

was allowed by order dated 04.02.2022, with the directions to dispense with the meetings of Shareholders, Secured Creditors and Unsecured Creditors of all the Petitioner Companies for the reasons mentioned in the aforesaid order..

4. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the order dated 04.02.2022.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 20.04.2022 and the same were complied by filing an affidavit by Diary No. 00212/4 dated 27.06.2022. The notice of hearing was published in "Business Standard" (English) Delhi NCR Edition and "Business Standard" (Hindi) Delhi NCR Edition on 16.06.2022. The original copies of the newspapers are attached as Annexure-A of the aforesaid affidavit. It has also stated in the affidavit that copies of notices were served upon the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (b) Registrar of Companies, NCT of Delhi and Haryana; (c) the Official Liquidator (attached to Punjab and Haryana High Court); (d) Jurisdictional Income Tax Department through the Nodal Officer by mentioning the PAN of the Company by way of speed post/hand delivery. Original postal receipts along with the tracking report and acknowledgment receipts evidencing the delivery of notices are attached as Annexure-B of the aforesaid affidavits.

6. It is also deposed by the authorised signatories of the Petitioner Companies that Petitioner Companies has not received any objection to the Scheme of Arrangement from any stakeholders. The aforesaid affidavit has been filed by the Authorized Signatories of the petitioner companies by Diary No.00212/4 dated 27.06.2022.

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

7.1 Registrar of Companies (ROC)/Regional Director (RD)

7.1.1 The Regional Director (RD) has submitted it's report along with the report of Registrar of Companies (ROC) by Diary No. 00212/6 dated 31.08.2022. Para 10 of the report of Regional Director has set out certain observations as made in the RoC report dated 03.08.2022 with regard to ante-dated appointed date, No requirement of valuation, selective reduction of capital, not declaring the companies as dormant, Registering of companies as NBFC and fees to be paid on the authorised shared capital. Para 11 of the Regional Director's report mentions the respective responses to such observations given jointly by the Petitioner Companies vide a letter dated 05.08.2022.

7.1.2 The Regional Director in its report at Para 12 stated that the observations stand clarified

7.1.3 Thus, the Regional Director in its report has made no adverse observations against the proposed Scheme of Arrangement.

7.2 Official Liquidator

7.2.1 The Official Liquidator has filed his report by Diary No. 00212/5 dated 29.08.2022 wherein it has not raised any objection to the sanction of the Scheme of Arrangement. The Official Liquidator in its report has reproduced the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, key clauses of the Scheme of Arrangement, Share Entitlement Report etc. The Official Liquidator has also reproduced relevant extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements.

7.2.2 Thus, the Official Liquidator in its report has made no adverse observations against the proposed Scheme of Arrangement.

7.3 Income Tax Department

7.3.1 The Income Tax Department has filed its report vide Dairy No. 00212/7 dated 07.09.2022 in respect of Transferee Company stating that there is a demand amounting to Rs. 25,65,252/- for AY 2007-2008 and Rs.34,952/- for AY 2009-2010 and the Income Tax Department has no objection to the scheme between the petitioner companies if all the compliances under the Income Tax, 1961 shall be made by the transferee company after the appointed date and all the tax liabilities and all the pending appeals and proceedings under the Income Tax Act shall be enforced and continued against the Transferee Company.

7.3.2 In this context, this Tribunal is not shutting out the legitimate interest of the income-tax authorities to recover the lawful dues payable by the Petitioner Companies, and the Scheme of Arrangement provides for savings in relation to the liabilities. Accordingly, 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.

7.3.3 Thus, the Income Tax Department in its report has made no adverse observations against the proposed Scheme of Arrangement.

8. 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 was filed with first motion application as Annexure A-15 in the Petition. .

9. We have heard the learned counsel for petitioner companies, learned Senior Standing Counsel for the Income Tax Department and perused the record carefully.

10. 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 objections 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 Arrangement appended as Annexure-A1 of the Petition .

11. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, 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 law, against the concerned persons, directors and officials of the petitioners.

12. 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 property, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Transferor Companies 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 Companies are 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 Companies 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 Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

v. All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

vi. That the Appointed Date for the scheme shall be 01.04.2020 as specified in the Scheme;

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

viii. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Companies shares of Transferee Company to which they are entitled under the said Scheme;

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

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

xi. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;

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 Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Companies 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.

13. 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.

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

15. The Company Petition CP (CAA) No. 12/Chd/Hry/2022 is allowed and disposed of accordingly.