(2023) 05 NCLT CK 0091

In the National Company Law Tribunal

Case No : CA (CAA) No.1/Chd/Hry/2023

Hollysea Finvest Pvt. Ltd Vs

Date of Decision : 29-05-2023

Acts Referred:

Companies Act, 2013 — Section 52, 66, 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(7), 232, 232(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2023) 05 NCLT CK 0091

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

Bench : Division Bench

Advocate : Rajeev K. Goel

Final Decision : Disposed Of

Judgement

1. Heard the learned counsel for the applicant Companies. This is a joint First Motion Application filed by Applicant Companies namely; Hollysea Finvest Pvt Ltd and Abhinandan Trafin Pvt Ltd (Transferor Company No. 7 and 8) under Sections 230 & 232 of the Companies Act, 2013, read with Sections 66 and 52 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 Arrangement between Star Wire (India) Electricity Pvt Ltd, Star Wire (India) Biomass Pvt Ltd, Mumet (India) Pvt Ltd, Juhi Leasing, Finance Ltd, Interglobal Steels Pvt Ltd and Sun Source Leafin Pvt Ltd (Transferor Companies No. 1 to 6, respectively); Hollysea Finvest Pvt Ltd and Abhinandan Trafin Pvt Ltd (Transferor Company No. 7 and 8) with Star Wire (India) Ltd (Transferee Company) and Star Wire (India) Laboratories Pvt Ltd (Resulting Company). The said Scheme is attached as Annexure A-12 of the Application.

2. It is informed by the learned counsel for the applicant that there are 10 applicant Companies out of which only two companies were originally under the jurisdiction of Delhi Bench. The Principle Bench, Delhi has passed an order dated

07.02.2023 allowing the transfer of the application with regard to the applicant Companies No.7 and 8 to NCLT, Chandigarh Bench, Chandigarh. It is further informed that the other applicant companies in the present application under Section 230-232 of the Companies Act, 2013 had filed an application bearing CA (CAA) No.03/Chd/Hry/2023 and the first motion order was passed by this Bench on 16.02.2023. Subsequently, the second motion petition related to other applicant Companies was filed bearing CP (CAA) No.16/Chd/Hry/2023 and order dated 19.04.2023 was passed with a direction to serve notices to different authorities as well as to make the publication in the newspaper. It is stated in the application that the present scheme of Arrangement includes Merger of Company No.1 to 8 together with Transferee Company, part of which will be demerged to the petitioner Company No.10 and in the result both Company Nos. 9 and 10 would be Resultant companies in this Arrangement.

3. The Transferor Companies No.7 and 8 have prayed for dispensation of the meeting with regard to the Equity Shareholders and Unsecured Creditors. As there are nil secured creditors therefore, there is nothing to call for the meetings of Secured Creditors.

4. The Transferor Company No.7 is engaged in the business of buyers, sellers, suppliers, traders, merchants, exporters in all kinds of commercial, natural and man-made fibers.

5. The Transferor Company No.8 is engaged in the business of xxxx

6. The rationale of the Scheme is given below:

i. All the Transferor and Transferee Companies are closely held un-listed Group Companies under common management and control. The proposed amalgamation of the Transferor Companies with the Transferee Company would result in the consolidation of Group Companies and pooling of their resources into a single entity.

ii. The Transferee Company is the Flagship Company of the Group, engaged in manufacturing of castings, forgings and rolled products from alloy steels, super alloy steel, high grade stainless steel and special steels which find applications in diversified engineering fields like automobiles, aerospace, super critical power plants, defense sector, etc. The Transferor Companies have made investments in various Group Entities. These Companies are Core Investment Companies (CICs) in terms of the RBI Regulations.

iii. The proposed Amalgamation will streamline and simplify the shareholding structure.

iv. The proposed Amalgamation would result in pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.

v. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.

vi. The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferee Company as well as by the Transferor Companies.

vii. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.

viii. The proposed Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

7. It is stated that the Board of Directors of the Transferor Companies No. 7 and 8, in their respective meetings held on 01.12.2022, have considered and unanimously approved the proposed Composite Scheme of Arrangement subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of the Applicant Transferor Companies No. 7 and 8 are attached with the application as Annexure A-1/5 and A-2/5.

8. The appointed date of the Scheme for the purpose of the Amalgamation shall be with effect from 01.04.2022 and for the purpose of the Demerger, the Appointed Date shall be the same date as the Effective Date as mentioned in Clause 1 [1.4 & 1.5] of Part-I of Scheme of Arrangement which is attached as Annexure: A-12 of the application.

9. The Applicant Transferor Companies No. 7 & 8 have filed their respective Audited Financial Statements for the year ended 31.03.2022 which are attached as Annexure A-1/2 and A-2/2 respectively of the Application. The Transferor Companies No. 7 & 8 have also filed their Unaudited Financial Statements (provisional) for the period ended 30.06.2022 which are attached as Annexure A-1/3 and A-2/3 respectively of the Application.

10. It is further submitted that in pursuance of the proviso to Section 230(7) and Section 232(3) of the Act, the Transferor Companies No. 7 & 8 have filed certificates dated 22.12.2022 issued by their respective Statutory Auditors certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure: A-13 with the application.

11. It is further submitted that as per the Valuation Report/Share Entitlement Ratio Report dated 28.11.2022 submitted by Ms. Mallika Goel, Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI) vide Registration No. IBBI/RV/11/2022/14784

is attached as Annexure A- 11 of the application. The Share Entitlement Ratio is given below:

Share Exchange Ratio for Amalgamation:

a. The Transferee Company will issue 221 (two hundred and twenty-one) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 1 for every 100 (one hundred) Equity Shares of ☐ 10 each held in the Transferor Company No. 1-Star Wire (India) Electricity Pvt Ltd.

b. The Transferee Company will issue 334 (three hundred and thirty-four) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 2 for every 100 (one hundred) Equity Shares of ☐ 10 each held in the Transferor Company No. 2-Star Wire India (Biomass) Pvt Ltd.

c. The Transferee Company will issue 231 (two hundred and thirty-one) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 3 for every 100 (one hundred) Equity Shares of ☐ 10 each held in the Transferor Company No. 3-Mumet (India) Pvt Ltd.

d. The Transferee Company will issue 49 (forty-nine) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 4 for every 100 (one hundred) Equity Shares of ☐ 10 each held in the Transferor Company No. 4- Juhi Leasing and Finance Ltd.

e. The Transferee Company will issue 117 (one hundred and seventeen) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 5 for every 100 (one hundred) Equity Shares of ☐ 10 each held in the Transferor Company No. 5-Interglobal Steels Pvt Ltd.

f. The Transferee Company will issue 87 (eighty-seven) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 6 for every 100 (one hundred) Equity Shares of ☐ 1 each held in the Transferor Company No. 6-Sun Source Leafin Pvt Ltd.

g. The Transferee Company will issue 65 (sixty-five) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 7 for every 100 (one hundred) Equity Shares of ☐ 1 each held in the Transferor Company No. 7- Hollysea Finvest Pvt Ltd.

h. The Transferee Company will issue 52 (fifty-two) Equity Shares of ☐ 1 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 8 for every 100 (one hundred) Equity Shares of ☐ 1 each held in the Transferor Company No. 8- Abhinandan Trafin Pvt Ltd.

Share Exchange Ratio for Demerger:

a. The Resulting Company will issue 1 (one) Equity Share of ☐ 10 each, credited as fully paid-up, to the Equity Shareholders of the Transferee Company for every 100 (one hundred) Equity Shares of ☐ 1 each held in the Transferee Company-

Star Wire (India) Ltd.

b. The Resulting Company will issue 1 (one) Non-Cumulative Redeemable Preference Shares of ☐ 10 each, credited as fully paid-up, to each of the Preference Shareholders of the Transferee Company against their respective Preference Shareholding in the Transferee Company-Star Wire (India) Ltd (irrespective of the number of Preference Shares held by these Shareholders in the Transferee Company).

12. It is submitted that the Scheme (Annexure A-12) also takes care of the interest of the staff/workers and employees of the Transferor Companies No. 1 to 8, the Transferee Company and the Resulting Company, by virtue of Clause 2.5 and 3.7 of the Scheme.

13. It is submitted that all the Transferor Companies, the Transferee Company and the Resulting Company are closely held un-listed Group Companies and are not regulated by any sectoral regulator.

14. It is deposed by the authorised representatives of Transferor Companies No.7 and 8 that there are no material investigations or legal proceedings pending against any of the Applicant Companies under Section 210 to 227 of the Companies Act, 2013 and Section 235 to 251 of the Companies Act, 1956 or any other applicable law. Moreover, there are no proceedings pending under the Companies Act, 2013 before the jurisdictional Adjudicating Authority.

15. It is further submitted that the list of equity shareholders of Transferor Company No.7 duly certified by its Director along with a consent furnished of all equity shareholders by way of affidavit is attached with the application as Annexure A-1/6. As per the list there are three equity shareholders as on 15.11.2022.

16. It is further submitted that the list of secured creditors of Transferor Company No.7 duly certified by Neeti and Associates, Chartered Accountants is attached with the application as Annexure A-1/7. As per the list there are nil Secured Creditors as on 30.06.2022. The list of Unsecured Creditors of Transferor Company No.7 duly certified by Neeti and Associates, Chartered Accountants along with their consent furnshied by way of affidavit is attached with the application as Annexure A-1/8. As per the list there are One Unsecured Creditors as on 30.06.2022.

17. It is further submitted that the list of Equity Shareholders of Transferor Company No.8 duly certified by its Director along with a consent furnished of all Equity Shareholders by way of affidavit is attached with the application as Annexure A-2/6. As per the list there are three equity shareholders as on 15.11.2022.

18. It is further submitted that the list of Secured Creditors of Transferor Company No.8 duly certified by Neeti and Associates, Chartered Accountants is attached with the application as Annexure A-2/7. As per the list there are nil

Secured Creditors as on 30.06.2022. The list of Unsecured Creditors of Transferor Company No.8 duly certified by Neeti and Associates, Chartered Accountants along with their consent furnshied by way of affidavit is attached with the application as Annexure A-2/8. As per the list there are One Unsecured Creditors as on 30.06.2022.

19. Accordingly, the directions of this Bench in the present case are as under:

I. In relation to Transferor Company No. 7 and 8:

a. The meeting of the Equity Shareholders of Transferor Company No.7 and 8 are dispensed herewith, keeping in view that all the Shareholders have given their consents by way of affidavits.

b. Since, there are no Secured Creditors in Transferor Company No.7 and 8, the requirement of convening the meeting of Secured Creditors does not arise;

c. The meeting of the Unsecured Creditors of Transferor Company No.7 and 8 is dispensed herewith, keeping in view that all Unsecured Creditors have given their consents by way of affidavits.

20. In view of the above, the First Motion Application stands allowed with a direction to the Transferor Company No.7 and 8 to file a second motion petition at the earliest so that the matter can be taken up with other application filed by other companies in this amalgamation. The Transferor Company No.7 and 8 shall make specific prayer for sending notices to the Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, concerned Registrar of Companies, Official Liquidator and Income Tax Authorities by disclosing the PAN numbers of all the Companies in the title of the Second Motion Petition. The Transferor Company No.7 and 8 are directed to file latest Financial Statements not later than 6 months with a second motion petition.

