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(2020) 05 NCLT CK 0022

In the National Company Law Appellate Tribunal

Case No : Company Petition CAA No. 124(PB) Of 2019 In Company Application (CAA) No. 99(PB) Of 2019

Imprimis Life Pr Private Limited APPELLANT

Vs

Perfectrelations Private Limited RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:
Companies Act, 2013 — Section 129, 230, 231, 232, 232(3)(i)

Citation : (2020) 05 NCLT CK 0022

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

Bench : Division Bench

Advocate : Mukesh Sukhija, Naresh Kumar, Tania Sharma, Zoheb Hossian, Parth Samwal

Final Decision : Disposed Of

Judgement

B.S.V. Prakash Kumar, J

1. This Joint Application 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. The copy of the Scheme has been placed on record.

2. A perusal of the petition that initially the First Motion application seeking directions for convening/dispensing with the meetings of Shareholders and Creditors was filed before this bench and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, this Tribunal vide its first motion order issued directions with respect to the same. The Petitioners were directed to carry out publication in the newspapers English Daily 'Business Standard' (Delhi Edition) as well as in Hindi Daily 'Business Standard' (Delhi Edition). In addition thereto notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana,

Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

3. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order. A perusal of the Affidavit discloses that the petitioners have effected the newspaper publication as directed in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition were duly served on the Regional Director, Northern Region, Registrar of Companies, Delhi and Haryana, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement by the respective offices have also been place on record.

4. The Counsel for the Petitioner Companies has submitted that clause 5 of the present Scheme states that upon Scheme becoming effective, all the assets and also the liabilities of the Transferor Companies shall be incorporated in the books of the Transferee Company on the basis of the values recorded in the books of accounts of the Transferor Companies as on the appointed date. The debit balance in the books of the Transferor Companies towards miscellaneous expenditure to the extent not written off as shown in the books of the Transferor Companies on that date shall be set of against the amalgamation reserve account of the Transferee Company. It is further submitted by the Counsel for the Petitioners that no winding up petitions are initiated/pending against the Transferor Companies and there are no other investigations pending or proceedings initiated under the Companies Act, 2013/1956.

5. Further, the Regional Director, MCA (RD) in its affidavit dated 14.10.2019 has stated that the Transferor Companies are regular in filing the statutory returns. It has further submitted that no complaints/inspection/investigation or Prosecution are pending against the Transferor and Transferee Companies. Further Regional Director has observed that compliance to sections 232(3) (i) of the Companies Act, 2013 about fee payable on its revised authorized share capital. In response of the aforesaid observation of the Regional Director, the petitioner companies have undertaken to comply with sections 232 (3)(i) of the Companies Act, 2013.

6. The Official Liquidator in his Report dated 08.11.2019, based on the information submitted by the Petitioner Companies, submitted that no Complaint against the proposed Scheme is received from any person/party interested in the Scheme in any manner till the date of filing of the Report.

7. The income Tax Department have recorded that all taxes and dues payable by the Transferor Companies shall be treated as liability of the Transferee Company (Resulting Company), including the demand of Rs. 17,90,860/-pending, for AY 2007-08 and AY 2008-09 in the case of M/s. Image Public Relations (Transferor Company No. 2) which upon sanctioning of the scheme would be payable by the Transferee Company herein. The Income Tax Department's right to initiate and/ or continue any proceedings under the income Tax Act, 1961, in the case of Transferor Companies against the Transferee Company is reserved and the

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Income Tax Department's right to recover any demand payable by the Transferor Companies from Transferee Company is also reserved. Further, the Income Tax Department's right to determine the tax implications of the scheme of amalgamation as per Income Tax Act, 1961 is specifically reserved and it is clarified that the provisions of the Income Tax Act, 1961 for the purpose of Income Tax proceedings shall prevail over anything contrary provided under the scheme. All tax assessment proceedings and appeals of whatsoever nature by or against the Transferor Companies pending or arising as on the Effective date shall be continued and/or enforced by or against the Transferee Company in the same manner as it would have been continued by or against the Transferor Companies. The aforementioned proceedings shall neither abate or discontinue nor in any way be prejudicially affected by the reason of amalgamation scheme.
8. It is further stated that in order to protect the interest of the revenue it is made clear that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax clues if any from petitioner companies, including imposition of penalties etc., as provided in law.

9. Para 15 of the Scheme provides that the merger of the Transferor Company with Transferee Company shall be accounted as per "The Pooling of interests Method" as prescribed in the Accounting Standard-14 contained in company (Accounting Standards) Rules, 2006, notified under Section 129 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015.

10. The Transferee Companies has undertaken that the Transferee Company will pay the Fees, if any required to be paid to the Registrar of Companies after merger of the authorized Share capital of the Transferor Companies with the Authorized Share Capital of Transferee Company, if the Fees paid by the Transferor is insufficient & this undertaking has already been given by Transferor Companies & Transferee Company in para 12.1 of the Scheme of amalgamation and the proposed Scheme is not in contravention of Section 232 (3) (i) of the Companies Act 2013 and the Section clearly provides that "where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation".

11. 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 affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the reports of official Liquidator and, there appears to be no impediment in sanctioning the present scheme. Consequently, sanction is hereby granted to the scheme under section 230 to 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

12. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted

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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. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any granting exemption from payment of stamp duty, taxes including income tax, GST etc., or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

13. THIS TRIBUNAL DO FURTHER ORDER(S):

(A) WITH RESPECT TO TRANSFEROR COMPANIES AND TRANSFEREE COMPANY

1. That the Transferor Companies stand dissolved without being wound up; and

2. That all the property, rights and powers of all 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 vest in the Transferee Company for all the estates and interests of the Transferor Companies therein but subject nevertheless to all charges now affecting the same; and

3. That all the liabilities and duties of the Transferor Companies be transferred without further act or deed, to 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;

4. That all proceedings now pending by or against the Transferor Companies by continued by or against the Transferee Company;

5. That all the employees of the Transferor Companies in Service, if any, 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 conditions not less favourable than those subsisting in concerned Transferor Companies on the said date.

6. 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 the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company 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.

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.

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