(2021) 07 NCLT CK 0022

In the National Company Law Tribunal

Case No : C.P. (CAA) NO. 707/KB/2020 Connected with C.A. (CAA) NO.116/KB/2020

In Re: APPELLANT

Vs

Sutlaj Sales Private Limited RESPONDENT

Date of Decision : 13-07-2021

Acts Referred:
Companies Act, 2013 — Section 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230(1), 230(3), 230(4), 230(5), 230(6), 232(1), 232(3), 232(3)(i)

Citation : (2021) 07 NCLT CK 0022

Hon'ble Judges : Rajasekhar V.K, Member (J);Harish Chander Suri Member (T)

Bench : Division Bench

Advocate : Manju Bhuteria, N. Gurumurthy, Madan Kumar Maroti, Aisha Amin

Final Decision : Disposed Of

Judgement

Rajasekhar V.K., Member (Judicial)

1) The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (â??Actâ?) for sanction of the

Scheme of Amalgamation of PKD TRADING AND INVSETMENT COMPANY PRIVATE LIMITED being the Petitioner No. 2 above named (

Transferor Company NO 1"" or â??Petitioner No.2â?) and PRIYANKA TREXIM & COMMERCE PRIVATE LIMITED being the Petitioner

No. 3 above named (""Transferor Company NO 2 "" or â??Petitioner No.3 â?) RESPONCE CAPITAL LIMITED being the Petitioner No. 4

above named (""Transferor Company NO 3 "" or â??Petitioner No.4 â?) SPACEPLUS AGENCIES PRIVATE LIMITED being the Petitioner

No. 5 above named (""Transferor Company NO 4 "" or â??Petitioner No.5 â?) SREE GANESH FINCO & CREDIT PRIVATE LIMITED being the Petitioner No. 6 above named (""Transferor Company NO 5 "" or â??Petitioner No.6 â?) STUPENDORS COMMODEAL PRIVATE

LIMITED being the Petitioner No. 7 above named (T""ransferor Company NO 6 "" or â??Petitioner No. 7 â?) UROCHEM TRADES PRIVATE

LIMITED being the Petitioner No. 8 above named (T""ransferor Company NO 7 "" or â??Petitioner No. 8 â?) with SUTLAJ SALES PRIVATE

LIMITED being the Petitioner No.1 above named (T""ransferee Company"" or â??Petitioner No. 1 â?) whereby and where under the Transferor

Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01 st April,2019 in the manner and on the terms

and conditions stated in the said Scheme of Amalgamation (â??Schemeâ??).

2) The Petition has now come up for final hearing. The Ld. Counsel for the Applicants submits as follows:-

(a) The Scheme was approved by the respective Board of Directors of the Petitioner Companies at their meetings held on 26 th November,2019.

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

a) All the TRANSFEROR COMPANIES and the TRANSFEREE COMPANY are a Non-Banking Finance Companies duly registered with the

Reserve Bank of India and is currently engaged in investing and financing activities. The business of the TRANSFEROR COMPANIES and the

TRANSFEREE COMPANY can be combined/adjusted and carried forward conveniently with combined strength;

b) The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business

activities and Capital Structure;

c) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;

d) The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and

more productive utilization of various resources;

e) The business of the Company can be conveniently and advantageously combined together and in general business of the Company concerned and

will be carried on more economically and profitably under the said Scheme;

f) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling

further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant

company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Company for raising capital,

securing and conducting trade on favorable terms and other benefits;

g) The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these

businesses;

h) The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase

its profitability;

i) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

j) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate

duplication of work to their common advantages;

k) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

(e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report

thereon of MR. ANIL KUMAR GUPTA , IBBI Registered Valuer .

(f) The shares of the Petitioner Companies are not listed on specified stock exchanges.

(g) By an order dated 23 rd January, 2020 in Company Application (CAA) No 116/ KB / 2020, this Tribunal made the following directions with regard

to meeting(s) of shareholders and creditors under Section 230(1) [read with Section 232(1) of the Act]:-

(i) Meeting(s) dispensed:

Meeting(s) of the Equity Shareholders of Petitioner Companies, Unsecured Creditors of Petitioner No 2 , Petitioner No 4, Petitioner No 5 , Petitioner

No 6 , and Petitioner No 8 , for considering the Scheme were dispensed with in view of all shareholders of the Petitioner Companies and over 90% in

value of Unsecured creditors of Petitioner No 2 , Petitioner No 4, Petitioner No 5 , Petitioner No 6 , and Petitioner No 8 have respectively given their

consent to the Scheme by way of affidavits.

(ii) Meeting(s) directed to be held:

No meetings were directed

(iii) No requirement of Meeting(s):

In view of â??NILâ? Secured Creditors of the Petitioner Companies, Unsecured Creditors of Petitioner No 1, Petitioner No 3 and Petitioner No 7

duly verified by Auditors Certificates, no requirement of meetings arise

(h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 16 th March, 2020 the instant petition

was admitted by this Tribunal and fixed for hearing on 05 th day of May, 2020 upon issuance of notices to the Statutory / Sectoral Authorities and

advertisement of date of hearing. In compliance with the said order dated 16 th day of March, 2020, the Petitioner(s) have duly served such notices on

the Regulatory Authorities viz Income Tax Authorities on 22 nd April,2021, Registrar of Companies and Regional Director, Eastern Region on 22 nd

April,2021, Official Liquidator, High Court Calcutta on 20 th April,2021, Reserve Bank of India on 20 th April, 2021. The Petitioners have also

published such advertisements once each in the â??Financial Expressâ? and â??Aajkaalâ? in their respective issues dated 17 th May,2021. An

affidavit of Compliance duly affirmed has also been filed.

(i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been

made bona fide and is in the interest of all concerned.

3) Pursuant to the said advertisements and notices the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata [â??RD(ER)â?,

Official Liquidator, High Court, Calcutta (â??OLâ??) have filed their representations before this Tribunal.

4) The Official Liquidator has filed his report dated 30/06/2021 and concluded as under:-

At Para 8

That the Official Liquidator has not received any complaint against the proposed

Scheme of Amalgamation from any person/party interested in the

Scheme in any manner till the date of filing of this Report. At Para 10 That the Official Liquidator on the basis of information submitted by the

Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner

prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is

applicable.

5) The RD(ER) has filed his reply affidavit dated 30 th JUNE, 2021 (â??RD affidavitâ?) which has been dealt with by the Petitioner(s) by their

Rejoinder affidavit dated 30 TH JUNE,2021 (â??Rejoinderâ?). The observations of the RD and responses of the Petitioner(s) are summarized as

under:-

Paragraph No 2(a) of RD Afidavit

That it is submitted that as per available records, it appears that all the petitioner companies are updated in filing their Statutory Returns including

Financial Statements and Annual Returns.

Paragraph No.2 (a) of Rejoinder

No adverse comments made by the Registrar of Companies, West Bengal Hence no comments are of ered .

Paragraph No 2(b) of RD Afidavit

It is submitted that the Transferee Company namely Sutlaj Sales Private Limited and all Transferor Companies are carrying NBFC activities and

registered with RBI as NBFC. However, the RBI vide its letters no. DNBS.RO.KOL.No.735/99-06-002/20210-2 dated 23.03.2021 issued NOC to

the proposed Scheme of Amalgamation. Copies of the letters dated 23.03.2021 are annexed with the petition as Annexure - A.

Paragraph No. 2(b) of Rejoinder

The Reserve Bank of India, have vide their letter no DNBS .RO.KOL.NO.735/99-06-002/2020-21 dated 23-03-2021 have issued their NOC to the

proposed Scheme of Amalgamation. The Copies of the said NOC have been submitted to the Regional Director which has been annexed to his af

idavit as ANNEXURE â?" A.

Paragraph No 2(c) of RD AFidavit

Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act 2013 through appropriate af irmation.

Paragraph No.2(c) of Rejoinder

The Transferee Company undertakes that it shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of

fees upon clubbing of Authorized Share Capital of the Transferor Companies with the Authorized Share Capital of the Transferee Company in post-

amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC â?" 28.

Paragraph No 2(d) of RD Af idavit That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable

properties from the Transferor Companies to it.

Paragraph No.2 (d) of Rejoinder

The Transferee Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties from the Transferor

Companies to it.

Paragraph No 2(e) of RD Af idavit In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company shall

pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5

or INDAS-8 etc.

Paragraph No.2 (e) of Rejoinder

The Transferee Company undertakes that it shall make due compliance of Accounting Standard-14 or IND-AS-103, as may be applicable to it and

shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as

AS-5 or INDAS-8 etc.

Paragraph No 2(f) of RD Afidavit

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 Companies Act 2013 in meeting duly held in terms of section 230(1) read with sub-sections (3) to (5) of section 230 of the said Act and

the Minutes thereof are duly, placed on record.

Paragraph No.2 (f) of Rejoinder All the Shareholders of the Petitioner Companies have given their af idavit of consent to the proposed Scheme of

Amalgamation which has been annexed to the Company Application. The Honâ??ble Tribunal dispensed with the meeting of equity shareholders of

the Applicant Companies . The Honâ??ble Tribunal recorded that there is no requirement of meeting of Secured Creditors of the Petitioner

Companies in view of NIL Creditors verified by Auditors certificate .

The Honâ??ble Tribunal recorded that there is no requirement of meeting of Unsecured Creditors of Transferor Company No 2 and Transferor

Company No 6 in view of NIL Creditors verified by Auditors certificate . The Honâ??ble Tribunal dispensed with the meeting of Unsecured

Creditors of Transferor Company No 1 , Transferor Company No 3 , Transferor Company No 4 , Transferor Company No 5 and Transferor

Company No 7 in view of consent given by all the Unsecured Creditors in af idavit form

Paragraph No 2(g) of RD AfidaviT

The Hon'ble Tribunal may kindly direct the Petitioners to file an af idavit to the extent that the Scheme enclosed to the Company Application and

Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. 2(g) of Rejoinder

The Deponent duly authorised by the Petitioner Companies hereby af irms that the Scheme enclosed to the Company Application and Company

Petition are one and same and there is no discrepancy or no change is made.

Paragraph No 2(h) of RD Af idavit

The Petitioners under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be af

ected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with

any of the issues arising after giving ef ect to the scheme. The decision of such authorities shall be binding on the Petitioner Company(s) concerned.

Paragraph No. 2 (h) of Rejoinder

The Deponent duly authorised by the Petitioner Companies hereby af irms that the Scheme enclosed to the Company Application and Company

Petition are one and same and there is no discrepancy or no change is made.

Paragraph No 2(i) of RD Afidavit

It is submitted that as per instructions of the Ministry of Corporate Af airs, New Delhi, a copy of the scheme was forwarded to the Income tax

Department on 23/07/2020 with a request to forward their comments/ observations/ objections, if any. However, the same is still awaited.

Paragraph No. 2((i) of Rejoinder

The Of ice of the Regional Director have forwarded the Scheme to the concerned Income Tax Department under whose jurisdiction the Transferee

Company is assessed to Tax but the same is still awaited.

The Petitioner Companies have also complied with the directions contained in the order passed by the Honâ??ble Tribunal and have ef ected service

upon the Income Tax Department. However, the said department have not made / filed observation pursuant to the said notices filed by the Petitioner

Companies

6) Heard submissions made by the Ld Counsel appearing for the Petitioners. Upon perusing the records and documents in the instant proceedings and

considering the submissions, we allow the petition and make the following orders:-

a. The Scheme of Amalgamation mentioned in the Petition being Annexure â??Aâ? to the petition be and is hereby sanctioned by this Tribunal to be

binding with effect from â??Appointed Dateâ?, i.e., 1st day of April, 2019 on PKD TRADING AND INVESTMENT COMPANY PRIVATE

LIMITED, PRIYANKA TREXIM & COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES

PRIVATE LIMITED, SREE GANESH FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and

UROCHEM TRADES PRIVATE LIMITED with SUTLAJ SALES PRIVATE LIMITED and their shareholders and all concerned;

b. All the properties, rights and interest of PKD TRADING AND INVESTMENT COMPANY PRIVATE LIMITED, PRIYANKA TREXIM &

COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES PRIVATE LIMITED, SREE GANESH

FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and UROCHEM TRADES PRIVATE

LIMITED be transferred to and vested in without further act or deed in SUTLAJ SALES PRIVATE LIMITED and accordingly the same shall

pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be

transferred to and vested in SUTLAJ SALES PRIVATE LIMITED for all the estate and interest of PKD TRADING AND INVESTMENT

COMPANY PRIVATE LIMITED, PRIYANKA TREXIM & COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED,

SPACEPLUS AGENCIES PRIVATE LIMITED, SREE GANESH FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL

PRIVATE LIMITED and UROCHEM TRADES PRIVATE LIMITED but subject nevertheless to all charges, now affecting the same;

c. All the liabilities and duties of PKD TRADING AND INVESTMENT COMPANY PRIVATE LIMITED, PRIYANKA TREXIM &

COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES PRIVATE LIMITED, SREE GANESH

FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and UROCHEM TRADES PRIVATE

LIMITED be transferred without further act or deed to SUTLAJ SALES PRIVATE LIMITED and accordingly the same shall pursuant to Section

232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and

become the liabilities and duties of SUTLAJ SALES PRIVATE LIMITED;

d. That all the proceedings and/or suit appeals now pending by or against PKD TRADING AND INVESTMENT COMPANY PRIVATE

LIMITED, PRIYANKA TREXIM & COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES

PRIVATE LIMITED, SREE GANESH FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and

UROCHEM TRADES PRIVATE LIMITED shall be continued by or against SUTLAJ SALES PRIVATE LIMITED;

e. The Transferee Company do issue and allot shares to the shareholders of PKD TRADING AND INVESTMENT COMPANY PRIVATE

LIMITED, PRIYANKA TREXIM & COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES

PRIVATE LIMITED, SREE GANESH FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and

UROCHEM TRADES PRIVATE LIMITED as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized

share capital;

f. The schedule of assets in respect of PKD TRADING AND INVESTMENT COMPANY PRIVATE LIMITED, PRIYANKA TREXIM &

COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES PRIVATE LIMITED, SREE GANESH

FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and UROCHEM TRADES PRIVATE

LIMITED be filed within a period of 60 days from the date of the order to be made herein;

g. The Transferor Companies namely PKD TRADING AND INVESTMENT COMPANY PRIVATE LIMITED, PRIYANKA TREXIM &

COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES PRIVATE LIMITED, SREE GANESH

FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and UROCHEM TRADES PRIVATE

LIMITED shall stand dissolved from the appointed date ;

h. SUTLAJ SALES PRIVATE LIMITED, PKD TRADING AND INVESTMENT COMPANY PRIVATE LIMITED, PRIYANKA TREXIM &

COMMERCE PRIVATE LIMITED, RESPONCE CAPITAL LIMITED, SPACEPLUS AGENCIES PRIVATE LIMITED, SREE GANESH

FINCO & CREDIT PRIVATE LIMITED, STUPENDORS COMMODEAL PRIVATE LIMITED and UROCHEM TRADES PRIVATE

LIMITED shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be

delivered to the Registrar of Companies, West Bengal for registration respectively; i. Any person interested be at liberty to apply to this Honâ??ble

Tribunal in the above matter for any direction that may be necessary;

7) The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will

append such printout, upon verification to the certified copy of the order.

8) Company Petition (CAA) No. 707/KB/2020 is disposed of accordingly.

9) Urgent Photostat certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

