(2019) 09 NCLT CK 0016

In the National Company Law Tribunal

Case No : Company Petition No. 853, 854/CAA Of 2019, Company Application No. 179, 180/CAA Of 2019

In The Matter Of: Sheela Investments Private Limited And Another

Date of Decision : 09-09-2019

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232, 232(3)(i), 339, 340

Citation : (2019) 09 NCLT CK 0016

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Anil Kumar B, Member (Technical)

Bench : Division Bench

Advocate : R. Thiagarajan, B. Palani

Final Decision : Disposed Of

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under consideration is the Company Petition Nos. 853 & 854/CAA/2019 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. As per the Scheme of Amalgamation (in short, 'Scheme') "M/s. Sheela Investments Private Limited" (hereinafter referred to as 'Transferor Company') is proposed to transfer and vest its undertakings with "M/s. Raaviar Engineering Private Limited" (hereinafter referred to as 'Transferee Company') as a 'going concern'.

2. The Transferor Company was incorporated as a Private Limited Company on 21.03.1980 under the Companies Act, 1956 and having its Registered Office at No. 1, Nava India Road, Coimbatore - 641 028. The Transferor Company is carrying on the business to acquire, hold and deal in land and wherever necessary to engage in construction and related activities, etc. The details of the main objects are set out in the Memorandum of Association of the Transferor Company.

3. The Transferee Company was originally incorporated under the Companies Act, 1956 on 09.07.1984, under the name and style of 'M/s. Sameera Engineering Limited. Subsequently, the Company was converted into a Private Limited

Company and the name was changed to 'M/s. Raaviar Engineering Private Limited' on 27.03.2001. The Registered Office of the Transferee Company is situated at No. 1, Nava India Road, Coimbatore - 641 028. The Transferee Company is carrying on engineering business activities. The details of the main objects are set out in the Memorandum of Association of the Transferee Company.

4. The Board of Directors of the Transferor and Transferee Companies have approved the present Scheme of Amalgamation vide its Resolution dated 14.01.2019. This Bench vide order dated 11.04.2019 passed in CA/372 & 373/CAA/2019 has dispensed with the meeting of the Equity Shareholders and Unsecured Creditors in relation to the Transferor and Transferee Companies. The Petitioner Companies have also complied with all other necessary requirements.

5. The Representative for the Petitioner Companies has submitted that the rationale and circumstances that have necessitated the present Scheme is that, amalgamation of Transferor Company with the Transferee Company will enable consolidation of the business of the Transferor Company into one entity which will facilitate in focused growth, operational efficiency, business synergy, better supervision of the business of the group and more productive utilization of resources. It was further submitted that no winding up petitions are initiated against the Transferor Company and there are no other investigation or proceedings under the Companies Act, 2013/1956 which have been instituted or are pending in relation to the Transferor Company.

6. The Regional Director, Southern Region (in short, 'RD') in his Affidavit dated 28.05.2019 submitted that Clause 8 of the Scheme provides for the protection of the interest of the employees/staff/workmen of the Transferor Company.

7. The RD, in para 9 of his report has stated that in Clause 11.1 of Part III of the Scheme, it is proposed to combine the Authorized capital of the Transferor Company with the Transferee Company and the Transferee Company will pay the fees prescribed due on the revised capital after setting off the fee paid by the Transferor Company on its existing authorized capital. Hence, in the light of the Company's assurance of compliance of the provision of Section 232(3)(i) of the Companies Act, 2013, the RD has made no observation in this regard.

8. The RD, in para 8 of its Report has stated that as per the report of the RoC, Coimbatore, the Transferor and Transferee Companies are regular in filing their statutory returns. He has further submitted that no complaints/inspection/investigation or prosecution are pending against the Transferor and Transferee Companies. The RD has not raised any objection with regard to the sanction of the Scheme.

9. The Official Liquidator (In short, 'OL') in his Report dated 14.06.2019 stated that, on receiving the copy of the Order dated 11.04.2019 passed in CA/372/CAA/2019, he has appointed one Mr. N. Venkatesan, Chartered Accountant, who is one of the firms of Chartered Accountants from the panel, to verify the affairs of the Transferor Company. The Chartered Accountants verified the books and

accounts and other records of the Transferor Company and submitted their report to the OL on 31.05.2019.

10. The OL has stated that the Chartered Accountant after examining the files containing correspondence with the Registrar of Companies, nothing adverse or objectionable affecting the interest of the Company or its members or prejudicial to the public interest was noticed. Further, the Chartered Accountants have not come across any act of misfeasance by the Directors which would attract provisions of Section 339/340 of the Companies Act, 2013. Further, it has been stated that the Transferor Company is regular in filing tax returns and there are no arrears of disputed and undisputed tax. The OL has not raised any objection.

11. As mentioned in Clause 14 of Part-III of the Scheme, it appears that the Accounting Treatment is in conformity with the Accounting Standards. The Statutory Auditors of the both the Companies have examined the Scheme in terms of provisions of Sec. 232 of Companies Act, 2013 and the rules made thereunder and certified that Accounting treatment is in compliance with Section 133 of the Companies Act, 2013.

12. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Amalgamation annexed with the Petition is hereby sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The Appointed date of the Scheme is 01.04.2018.

13. While approving the Scheme as above, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

14. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

15. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.

16. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.

17. Upon receiving the certified copy of this Order, the RoC concerned is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be

consolidated with the files and records of the Transferee Company.

18. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

19. Accordingly, the Scheme stands sanctioned and CPs/853 & 854/CAA/2019 stand disposed of.

