(2019) 09 NCLT CK 0010

In the National Company Law Tribunal

Case No : Company Application No. 1793, 2972 MB Of 2019

In The Matter Of: Willingdon Realties Private Limited

Date of Decision : 19-09-2019

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232, 232(6)

Citation : (2019) 09 NCLT CK 0010

Hon'ble Judges : Bhaskara Pantula Mohan, J;Shyam Babu Gautam, Member (Technical)

Bench : Division Bench

Advocate : Ajit Singh Tawar, Ajit Singh Tawar, Rupa Sutar

Judgement

Bhaskara Pantula Mohan, J

1. Heard the learned Counsel for the Petitioner Companies. None appears before the Tribunal to oppose the Scheme or to contravene averments made in the Petition.

2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between Willingdon Properties Private Limited ('Demerged Company' or 'First Petitioner Company') and Willingdon Realties Private Limited ('Resulting Company' or 'Second Petitioner Company'), and their respective Shareholders ('Scheme').

3. The First Petitioner Company and the Second Petitioner Company (hereinafter collectively referred to as 'Petitioner Companies') have approved the said Scheme by passing respective Board Resolutions dated 25th April 2019 which are annexed to the Joint Company Scheme Petition.

4. The Learned Counsel for the Petitioner Companies state that the Joint Company Scheme Petition have been filed in consonance with the order passed in C.A.(C.A.A.)/1793/MB/2019 of National Company Law Tribunal, Mumbai Bench.

5. The Learned Counsel for Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of

the National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the rules made there under whichever is applicable.

6. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company is currently engaged in leasing of property and other non-core treasury activities comprising of trading and investments. The Second Petitioner Company is currently engaged treasury activities comprising of trading and investments.

7. The Demerger would, inter-alia, have the following benefits:-

? Proposed Demerger is expected to enhance the value for the shareholders in future and allow a focused strategy in operations of the Group, which would be in the best interests of the respective shareholders and other stakeholders;

? Greater administrative efficiency;

? Operational rationalization, organizational efficiency and optimum utilization of resources; and

? The Board of Directors of the Demerged Company and Resulting Companies are of the opinion that the Demerger would benefit the shareholders, employees and other stakeholders of the respective companies; and

8. The Regional Director has filed its report dated 18th day of September, 2019 and has stated that save and except as stated in paragraph IV (a) and (b) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

a) In Compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

b) As per Definition of the Scheme, "Appointed Date" means the 1st day of April 2019 or such other date as may be approved by the National Company Law Tribunal, Mumbai Bench or such other competent authority. And "Effective Date" means the date on which the certified copy of the order sanctioning the Scheme, passed by the National Company Law Tribunal at Mumbai, is filed with the Registrar of Companies, Mumbai by the Demerged Company and the Resulting Company. Any references in this Scheme to the date of "coming into effect of this Scheme" or "upon the Scheme being effective" shall mean the Effective Date.

In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

9. In so far as observation made in paragraph IV(a) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel undertake that the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-5 (IND AS-8) etc.

10. In so far as observation made in paragraph IV(b) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel undertakes that the Appointed Date has been fixed as 1st day of April, 2019 as mentioned in Clause 1.2 of Definitions under Part I of the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from such Appointed Date.

11. The observations made by the Regional Director have been explained by the Petitioner Companies in Paragraph 9 and 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted.

12. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

13. Since all the requisite statutory compliances have been fulfilled, Joint Company Scheme Petition No. C.P. (C.A.A)/2972/MB/2019 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Joint Company Scheme Petition.

14. Petitioner Companies are directed to lodge a certified/authenticated copy of this Order and the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 working days from the date of the receipt of the certified copy of the Order, for the purpose of adjudication of stamp duty payable, if any on the above.

15. Petitioner Companies are directed to lodge a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to the physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry, duly certified by the Deputy Registrar or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

16. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.