(2023) 03 NCLT CK 0077

In the National Company Law Tribunal

Case No : CP (CAA)/198/MB-IV/2021 IN CA (CAA)/79/MB-IV/2021

Ishan Sales Private Limited Vs

Date of Decision : 30-03-2023

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

Citation : (2023) 03 NCLT CK 0077

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ashish O. Lalpuria, Kamal Lahoty, Rupa Sutar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. The matter is taken up through video conference.

2. Heard Learned Counsel for Petitioner Company. No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.

3. The sanction of the Tribunal is sought under section 232 r/w section 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Amalgamation of Ishan Sales Private Limited, the First Transferor Company; Pacal View House Private Limited, the Second Transferor Company; Sh Exports Private Limited, the Third Transferor Company; Sh Ispat Udyog Private Limited, the Fourth Transferor Company; Sh Mercantile Private Limited, the Fifth Transferor Company; Shri Hari Compusoft (India) Private Limited, the Sixth Transferor Company; Shri Hari Drugs And Pharmaceuticals Private Limited, the Seventh Transferor Company; Shri Hari Homes Invest Private Limited, the Eighth Transferor Company; Silver Tulip Properties Private Limited, the Ninth Transferor Company, Wipro Vanijya Private Limited, the Tenth Transferor Company with Kalash Tie-Up Private Limited, the Transferee Company and their respective Shareholders.

4. The Petitioner Companies are in trading business.

5. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on 8th March, 2021 respectively. The appointed date of the scheme is 1st April, 2021.

6. The Company Scheme Petition has been filed in consonance with the Order passed in the CA(CAA) 79/MB-IV/2021 by the Hon'ble Tribunal and Petitioner Companies have complied with all directions in the said order. The Petitioners have filed necessary affidavits of compliance before the Bench.

7. Rationale for the Scheme is stated as under :

a) The management of all the Transferor Companies and the Transferee Company are closely held and owned by one family. There are cross shareholdings between Transferor Companies and between the Transferor Companies and the Transferee Company.

b) The Transferor Companies and Transferee Company are willing to merge into a single entity to eliminate the cross holding of shares and cancellation of shares within the entities and to rationalize the shareholdings of all the Companies. Shareholders will stand to benefit by the consolidation of the strengths of all the Companies.

c) In order to consolidate and effectively manage the Transferor Companies and the Transferee Company in a single entity, which will provide several benefits including synergy, economies of scale, attain efficiencies and cost competitiveness, it is intended that the Transferor Companies be amalgamated with Transferee Company. Furthermore, the multiple requirements of compliances under the various applicable laws for the Transferor Companies will not arise.

d) The amalgamation of all the Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings enabling effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of companies under the same Management and thus lead to reduction in administration efforts.

e) It would be advantageous to combine the activities and operations of all the Eleven Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues as the Companies are engaged in similar businesses thereby reduction in Statutory Compliance and other related cost of the combined entity.

8. The Petitioner Companies submits that Upon this Scheme becoming effective, the Transferee Company shall, issue and allot equity shares to the extent indicated below, to the members of the Transferor Companies holding fully paid-up equity shares in the following ratio:

a) To the shareholders of First Transferor Company:

336857 Equity Shares of Rs. 10/- each for every 710000 Equity Shares of the Face Value Rs. 10/- each held in the First Transferor Company.

b) To the shareholders of Second Transferor Company:

11423 Equity Shares of Rs. 10/- each for every 250 Equity Shares of the Face Value Rs. 10/- each held in the Second Transferor Company.

c) To the shareholders of Third Transferor Company

8063 Equity Shares of Rs. 10/- each for every 312500 Equity Shares of the Face Value Rs. 10/- each held in the Third Transferor Company.

d) To the shareholders of Fourth Transferor Company

1 Equity Shares of Rs. 10/- each for every 2760000 Equity Shares of the Face Value Rs. 10/- each held in the Fourth Transferor Company.

e) To the shareholders of Fifth Transferor Company

26101 Equity Shares of Rs. 10/- each for every 57150 Equity Shares of the Face Value Rs. 10/- each held in the Fifth Transferor Company.

f) To the shareholders of Sixth Transferor Company

31421 Equity Shares of Rs. 10/- each for every 146200 Equity Shares of the Face Value Rs. 10/- each held in the Sixth Transferor Company.

g) To the shareholders of Seventh Transferor Company

20843 Equity Shares of Rs. 10/- each for every 60100 Equity Shares of the Face Value Rs. 10/- each held in the Seventh Transferor Company.

h) To the shareholders of Eighth Transferor Company

721 Equity Shares of Rs. 10/- each for every 3750 Equity Shares of the Face Value Rs. 10/- each held in the Eighth Transferor Company.

i) To the shareholders of Ninth Transferor Company

1 Equity Shares of Rs. 10/- each for every 10000 Equity Shares of the Face Value Rs. 10/- each held in the Ninth Transferor Company.

j) To the shareholders of Tenth Transferor Company

69629 Equity Shares of Rs. 10/- each for every 475000 Equity Shares of the Face Value Rs. 10/- each held in the Tenth Transferor Company.

9. The Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as

required under the Act and the Rules made thereunder.

10. The Regional Director has filed his Report dated 23.05.2022 making certain observations. The Petitioner Companies have submitted/undertaken that :-

a) The Petitioner Companies shall comply with AS-14 (IND AS-103) and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme.

b) The Petitioner Companies shall comply with Section 232(3)(i) of Companies Act, 2013, 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 and therefore, petitioners to affirm that they comply the provisions of the section.

c) The surplus, if any arising out of Amalgamation shall be credited to "Capital Reserve arising out of Amalgamation" and deficits, if any shall be debited to Goodwill Account and the reserves shall not be available for distribution of dividend and other similar purposes by the Transferee Company.

d) The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

e) The interest of creditors will be protected.

f) The Petitioner Companies have paid the deficit Income Tax wherever applicable and have also requested the Income Tax Department to rectify and clear the outstanding dues as appearing in the record of Income Tax Department.

11. The Regional Director has filed his supplementary Report dated 7th December, 2022 has stated that the response of the Petitioner Companies is acceptable and that Hon'ble Tribunal may pass appropriate Order after considering the Income Tax implications and filing of Form BEN-2. In this regard, the Petitioner Companies have filed their respective e-form BEN-2 on 10th December, 2022 with the Registrar of Companies and also undertakes to comply with the applicable income tax aspects in accordance to law. Ms. Rupa Sutar, appearing for the Regional Director, has confirmed that she does not have any further objection to the Proposed Scheme and the Proposed Scheme may be approved.

12. The Official Liquidator has filed his report on 6th May, 2022, inter alia stating that the affairs of the Transferor Companies have been conducted in a proper manner and that his representation may be taken on record.

13. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible

under the Income Tax Law.

14. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy. The undertakings given by the Petitioner Companies are hereby accepted.

15. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No.198/MB-IV/2021 is made absolute in terms of prayer clauses 76 (a) to (e) of the Company Petition.

16. The Transferor Companies be dissolved without winding up.

17. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.

18. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

19. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.

20. Ordered Accordingly.

