(2023) 05 NCLT CK 0021

In the National Company Law Tribunal

Case No : C.P.(CAA) No. 108/2022 Connected with C.A.(CAA) No. 27/2022

J M Cotton Ginning And Pressing Companyprivate Limited Vs

Date of Decision : 04-05-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 230(1), 230(3), 230(5), 230(6), 232, 232(3), 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2023) 05 NCLT CK 0021

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

1. The Court is convened by videoconference.

2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.

3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of J M COTTON GINNING AND PRESSING COMPANY PRIVATE LIMITED and KRISHI-DHAN CATTLE FEEDS PRIVATE LIMITED, the Transferor Companies with SETH BHIKAMCHAND JAIN OIL INDUSTRIES PRIVATE LIMITED, the Transferee Company.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 17th December, 2021 which are annexed to the respective Company Scheme Petitions.

5. The Learned Advocate appearing on behalf of the Petitioners states that the

Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 27 of 2022 of the Hon'ble Tribunal.

6. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

7. The Learned Counsel for the Petitioner Companies states that the Petitioner Company No. 1 is presently engaged in the business of Ginning Pressing of Cotton Bales and that the Petitioner Company No. 2 is presently engaged in the business of renting agricultural land and that the Petitioner Company No.3 is presently engaged in the business of renting agricultural land.

8. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:

a. Reduction of shareholding layers, overheads, facilitates administrative convenience, enables cost savings and ensures optimum utilization of resources.

b. Simplification of corporate structure through absorption of the Transferor Companies by the Transferee Company.

c. It will provide the benefit of operational synergies to the combined entity, which can be put to the best advantage of the stakeholders.

d. Enables optimum utilization of funds and resources.

e. Improved organizational capability and leadership to compete successfully in an increasingly competitive industry. Greater efficiency in cash management and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.

9. The Regional Director has filed his Report dated 15th July, 2022 inter-alia making the following observations in paragraphs 2 (a) to (g) which are reproduced hereunder:

Para

Observation by the Regional Director

Undertaking of the Petitioner Company/Rejoinder

2(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.

So far as the observation in paragraph 2(a) of the Report of the Regional Director is concerned, the Petitioners undertake to 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.

2(b)

As per Definitions of the Scheme, "The Appointed Date" means 1st April, 2021 or such other date as the Tribunal or other competent authority may otherwise direct/fix

"The Effective Date" means the date on which certified copies of the Order(s) of the Tribunal vesting the assets, properties, liabilities, rights,

duties, obligations and the like of the

Transferor Companies in the Transferee Company are filed with the Registrar of Companies, Maharashtra, Mumbai after obtaining the necessary consents, approvals, permissions, resolutions, agreements, sanctions and orders in this regard. 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."

So far as the observation in paragraph 2(b) of the Report of the Regional Director is concerned, the Petitioners confirm that the definition "Appointed Date" means 1st April, 2021. Further, Clause 4.5 of the Scheme specifies that the appointed date shall be 1st April, 2021. Further, the Petitioners confirm that the "Effective Date"

shall be the date on which the certified or authenticated copies of the Order sanctioning this scheme by the Mumbai Bench of National Company Law Tribunal is filed with the Registrar of Companies, Maharashtra, Mumbai by the Transferor Companies and the Transferee Company as required under the provisions of the Companies Act, 2013. The Transferee Company further undertakes to comply with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner

Companies clarify that the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st April, 2021.

2(c)

Petitioner

Company

have

to

So

far

as

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observation

in

undertake to comply with section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.

paragraph 2(c) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees and stamp duty, payable if any.

2(d)

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 Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

So far as the observation in paragraph 2(d) of the Report of the Regional Director is concerned, the Petitioner Companies state that the meetings of members of J M Cotton Ginning And Pressing Company Private Limited, (Transferor Company No. 1) and Krishi-Dhan Cattle Feeds Private Limited, (Transferor Company No. 2) and the meeting of creditors of J M Cotton Ginning And Pressing

Company Private Limited, (Transferor Company No. 1); Krishi-Dhan Cattle Feeds Private Limited, (Transferor Company No.

2) and Seth Bhikamchand Jain Oil Industries Private Limited (Transferee Company) were dispensed with by the Hon'ble Tribunal vide its Order dated 11th March, 2022. Therefore, the requirement of holding the meetings and furnishing the minutes for the above is not applicable. The Petitioners further undertake that the meeting of shareholders of Seth Bhikamchand Jain Oil Industries Private Limited (Transferee Company) was held on Tuesday, 26th April, 2022 at 11:00 a.m. as per the directions of Hon'ble Tribunal and the resolution for approval of scheme of amalgamation was approved by the requisite majority of shareholders as per the requirements of Section 230 of the Companies Act, 2013. A certified extract of Minutes of the meeting of shareholders held on Tuesday, 26th April, 2022 been enclosed herewith and marked as

'Annexure B' to this affidavit.

2(e)

The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regards, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.

So far as the observation in paragraph 2(e) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961 and the petitioner companies shall ensure compliance of all the provisions of Income Tax

Act and Rules thereunder.

2(f)

That on examination of the report of the Registrar of Companies, Mumbai dated 08.07.2022 (Annexed as Annexure – A-1) that all the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies, Further, the petitioner companies have filed Financial Statements upto 31.03.2021. further observations in ROC report are as under:

i. That the ROC Mumbai in his report dated 08.07.2022 has stated that no Inquiry, inspection, investigation & prosecution is pending against the subject applicant companies ii. It is submitted that as per the provisions of Section 230(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the Transferor company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, it any, after setting- off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased capital subsequent to the amalgamation.

iii. Interest of the Creditors should be protected

So far as the observation in paragraph 2(f) of the Report of the Regional Director with respect to observation of Registrar of Companies, Mumbai is concerned, the Petitioner Companies undertake to

(1) comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees and stamp duty, payable if any; and

(2) protect the interest of creditors at all times

10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection to the Scheme.

11. The Official Liquidator has filed his report on 14th October, 2022 in the Company Scheme Petition No. 108 of 2022, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Companies and that the Transferor Company may be ordered to be dissolved by this Tribunal.

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

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 108 of 2022 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition

14. The First and Second Petitioner Company be dissolved without winding up.

15. Petitioners 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.

16. 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.

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

18. The Appointed Date is 1st April, 2021.

19. Ordered Accordingly. Pronounced in open court today.

