(2022) 10 NCLT CK 0036

In the National Company Law Tribunal

Case No : C.P. (CAA) No. 189/ KB / 2021 Connected with C.A. (CAA) No. 143/ KB / 2021

JKS India Holdings Private Limited & Ors Vs

Date of Decision : 19-10-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(1), 230(5), 232, 232(1), 232(3)(i), 232(4)

Citation : (2022) 10 NCLT CK 0036

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Vikram Wadehra, Vidushi Chokhani, Soumava Ghosh

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical):

1. The instant petition has been filed under Section 230 to 232 of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of JKS India Holdings Private Limited, the Applicant No. 1 [hereinafter referred to as the "Transferor Company 1"], Value Spaces Bhoomi Ventures Private Limited, hereinafter referred to as the "Transferor Company 2"] with JKS Finance Limited ("Transferee Company") whereby and whereunder the Transferor Companies is proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

2. The Petition has now come up for final hearing. Counsel for the Petitioners submits as follows:

a) By an order dated 23rd September 2021 in Company Application (CAA) No. 143/ KB / 2021, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-

b) Meetings dispensed: Meetings of the Equity Shareholders and Unsecured

Creditors of all the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act.

c) No requirement of Meetings: NIL Secured Creditors of Applicant Companies are verified by auditors certificate.

d) Meetings to be held: No meeting is required to be held.

3. It is stated that the Statutory Auditors of the Transferee Company have provided a certificate to the effect that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

4. It is further stated that none of the Directors of any of the Petitioners have any material interest in the Scheme except as Directors and shareholders in general and the extent of which will appear from the Register of Director's shareholdings maintained by the respective Petitioners.

5. It is further stated that 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 Bhavin R. Patel, Approved Valuers.

6. The shares of the all Petitioner Companies are not listed in any Stock Exchange.

7. Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 14th December 2021 the instant petition was admitted by this Tribunal and fixed for hearing on upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 14th December 2021, the Petitioner(s) have duly served such notices on the Regional Director, MCA on 21st January 2022, Registrar of Companies on 21st January 2022, Official Liquidator on 21st January 2022, Income Tax Department on 21st January 2022 as well as the Regional Director, Reserve Bank of India on 21st January 2022. The Petitioner(s) have also published such advertisements once each in the Business Standards and Aajkaal in their respective issues dated 28th January 2022. An affidavit of compliance duly affirmed on 1st February 2022 and 2nd February 2022 respectively in this regard has also been filed by them.

8. The Official Liquidator vide its letter dated 10.03.2022 is of the view that on the basis of information submitted by Petitioners is of the view that the affairs of the aforesaid Transferor Companies does 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.

9. Pursuant to the said advertisements and notices, the Reserve Bank of India raised several queries which was duly addressed by the Applicant herein. Thereafter vide letter dated 5th September 2022 Reserve Bank of India issued No Objection (Valid for 6 months) to the scheme of Amalgamation of transferor

companies with the Transferee NBFC JKS Finance Limited.

10. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), has filed representations before this Tribunal. The RD has served his reply affidavit affirmed on 8th February 2022 ("RD Affidavit") which has been dealt with by the Petitioner(s) in their affidavit of Rejoinder Cum undertaking affirmed on 9th February 2022. The observations of the RD and responses of the Petitioner(s) are summarized as under: Paragraph No. 2 of RD affidavit dated 19th August 2021 as follows:-

a) Para 2(a) of RD Affidavit: It is submitted that as per available records, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. However, the Petitioner Transferor Companies should file the Financial Statement and Annual Return for the year ended 31st March 2021 before the merger takes place.

Response of the Petitioner(s): With reference to para 2(a), it is stated that all the Petitioner Transferor Companies have filed their annual returns on 8th February 2022. Furthermore, Form AOC - 4 (in relation to filing of financial statements) for all the petitioner companies have been filed recently.

b) Para 2(b) of RD Affidavit: It is submitted that transferee company namely JKS Finance Limited is registered with RBI as NBFC company. However, no 'NOC' from RBI has been provided yet.

Response of the Petitioner(s), with reference to para 2 (b), it is stated that the Transferee Company upon having made multiple submissions/reminders to the Hon'ble Reserve Bank of India ('RBI') for obtaining no–objection certificate ('NOC'), has duly obtained the NOC from the Hon'ble Reserve Bank of India ('RBI') on 5th September 2022.

c) Para 2(c) of RD Affidavit: Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act 2013 through appropriate affirmation.

Response of the Petitioner(s), with reference to para 2 (c), it is stated that the Petitioner Companies undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013. Upon the scheme becoming effective, the authorized share capital of the Transferor Companies shall get merged with that of the Transferee Company and the fee, if any, paid by the Transferor Companies on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the amalgamation. Further, the Petitioner Company's undertook to pay any additional fee for the increase in the authorized share capital of the Company post set off shall be duly paid by the Transferee Company upon the Scheme becoming effective.

d) Para 2(d) of RD Affidavit: 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.

Response of the Petitioner(s), with reference to para 2 (d), it is stated that the observations made by the Learned Regional Director in relation to the payment of stamp duty on the transfer of immovable properties from the Transferor Companies to the Transferee Company are not applicable in the facts of the present case as there are no immovable properties in any of the Transferor Companies. Nonetheless, the Transferee Company submits that the Stamp Duty, if any, payable on the Scheme shall be duly paid by the Transferee Company upon the scheme becoming effective.

e) Para 2(e) of RD Affidavit: The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancies or no change is made.

Response of the Petitioner(s): With reference to para 2 (e), it is stated that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy and no change.

f) Para 2(f) of RD Affidavit: 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 affected 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 effect to the scheme. The decision of such authorities shall be binding on the Petitioner Company (s) concerned.

Response of the Petitioner(s), with reference to para 2 (f), it is stated that under provisions of section 230(5) of the Companies Act 2013 and in terms of the order of Hon’ble National Company Law Tribunal, Kolkata Bench twice notices to all concerned statutory authorities which are likely to be affected by the Amalgamation has been served. Further the Transferee Company undertakes that even after the sanction of scheme, the Transferee Company will be liable for all liabilities of Transferor Company. The Petitioner Companies undertakes that concerned statutory authorities decision shall be binding on the Petitioner Company concerned.

g) Para 2(g) of RD Affidavit: It is submitted that as per instructions to the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 2nd January 2020 for their views/observation in the matter. However, the same is still awaited.

11. After hearing submissions made by the Ld. Counsel appearing for the Petitioners, it is ordered that in case of any default in this respect of the Transferor Companies, the ROC, West Bengal shall be at liberty to initiate appropriate proceedings against the Transferee Company, which after the sanction of the scheme by this Tribunal is in any case responsible for the liabilities/non-compliance of the Transferor Companies also.

12. Further, heard submissions made by the Ld. Regional Director and 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 paragraph 1 of the petition, being Annexure "A" is hereby sanctioned by this Tribunal with the Appointed Date fixed as 01.04.2021 ("Appointed Date") and the same shall be binding their respective shareholders and creditors and all concerned;

b) All the rights and powers of the Transferor Companies be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

c) All the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

d) The employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;

e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;

f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

g) Leave is granted to the Petitioner(s) to file the Schedule of Assets and Liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

h) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

i) The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Companies shall be dissolved without winding up with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

13. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

14. The Company Petition being C.P. (CAA) No. 189/KB/2021 is disposed of accordingly.

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

