(2022) 10 NCLT CK 0008

In the National Company Law Tribunal

Case No : CA(CAA) 228/MB/2022

Jyothy Fabricare Services Limited Vs

Date of Decision : 07-10-2022

Acts Referred:
Companies Act, 2013 — Section 180, 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2022) 10 NCLT CK 0008

Hon'ble Judges : P.N. Deshmukh (Retd.), Member, (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ashish O. Lalpuria, Kamal Lahoty

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam (Member Technical)

1. The Court convened by videoconference.

2. Learned Authorised Representative for the Transferor Company and Transferee Company (Applicant Companies) states that the present Scheme is an Application for an arrangement embodied in the Scheme of Amalgamation of JYOTHY FABRICARE SERVICES LIMITED, the Transferor Company with JYOTHY LABS LIMITED, the Transferee Company and their respective Shareholders.

3. The Learned Authorised Representative for the Applicants states that the respective Board of Directors of Transferor Company and the Transferee Company at its respective Board Meeting held on 12th September, 2022 approved the Scheme.

4. The Learned Authorised Representative for the Applicants states that appointed date of Scheme of Amalgamation is 1st October, 2022.

5. The Learned Authorised Representative for the Applicants submit that the Transferor Company is a wholly owned Subsidiary of the Transferee Company.

6. The Learned Authorised Representative for the Applicants submits that the

Transferor Company is in the business of laundry and dry-cleaning services and the Transferee Company is engaged in manufacturing and marketing of fabric care, dishwashing, personal care and household insecticides products.

7. The Learned Authorised Representative for the Applicants submit that the paid up share capital of the Transferor Company is Rs. 23,85,00,000/- divided into 2,05,50,000 Equity Shares of Rs. 10/- each and 33,00,000 Preference Shares of Rs. 10/- each. The paid up share capital of the Transferee Company is Rs. 36,72,08,644/- divided into 36,72,08,644 Equity Shares of Re.1/- each.

8. The Learned Authorised Representative for the Applicants submit that since the present Application is for Scheme of Amalgamation of wholly owned Subsidiary (Transferor Company) with its holding Company (Transferee Company), no shares are being issued as the shares held by the Transferee Company in Transferor Company would be cancelled and extinguished upon Amalgamation.

9. The Learned Authorised Representative for the Applicants submit that the rationale for the Scheme is as under:

i. The Transferor Company and the Transferee Company are companies within the same group of companies ("Group"). A consolidation of the Transferor Company and the Transferee Company by way of amalgamation would therefore lead to a more efficient utilization of capital and create a stronger base for future growth of the amalgamated entity.

ii. The Transferor Company is in the business of laundry and dry-cleaning services and whereas the Transferee Company is in the business of manufacturing of fabric care, dishwashing, personal care and household insecticides products. Since both the Companies are operating in complementary/ similar line of business, the same can be conveniently combined for mutual benefit and can be carried out more efficiently as one amalgamated entity.

iii. The proposed amalgamation will help pool and combine finances and resources into one consolidated entity which will result in administrative and operations rationalization, organization efficiencies, optimal utilization of various resources, overheads and other expenses and better compliance management.

iv. The proposed amalgamation will help the Transferee Company to achieve financial strength and flexibility aiding in achieving economies of scale, more focused operational efforts, standardization and simplification of business processes and productivity improvements.

v. The proposed amalgamation will help the Transferee Company to enhance its reach to serve customers better thereby leading to increased business opportunities and its net worth.

vi. The proposed amalgamation will reduce management overlaps, as two of the Independent Directors of the Transferee Company are the Independent Directors in the Transferor Company, which will improve efficiency in managing companies. Elimination of multiple entities will help in streamlining the organization structure of the Transferee Company and the proposed amalgamation will prevent cost duplication and will result in synergies in operations which would increase the operational efficiency and integration of business functions. The proposed amalgamation is commercially and economically viable, feasible, fair and reasonable and is in the interest of the Transferor Company, the Transferee Company and their respective stakeholders.

10. The Applicant Company 1 / Transferor Company has 7 (seven) equity shareholders. All of them have given their consent to the Scheme by way of Affidavits. These are placed at p. 547-562 of the Application. In view of this, the meeting of the equity shareholders of the Transferor Company is dispensed with.

11. The Applicant Company 1 / Transferor Company has 1 (One) Preference shareholder who has given the consent to the Scheme by way of Affidavits. These are placed at p. 564-566 of the Application. In view of this, the meeting of the Preference shareholder of the Transferor Company is dispensed with.

12. That Learned Authorised Representative submits that there are no Secured Creditors in the Transferor Company.

13. There are 64 (Sixty Four) Unsecured Creditors in the Applicant Company 1 / Transferor Company with a total outstanding amount of Rs. 106,20,64,889/- (Rupees One Hundred and Six Crore Twenty Lacs Sixty-Four Thousand Eight Hundred and Eighty Nine Only). The detail of the same has been placed at p. 567-569 of the Application. The Unsecured Creditors constituting 98.86% in value of debt have issued their no objection to the Scheme which is placed at page no. 570-577 of the Application. In view of this, the meeting of the unsecured creditor of the Transferor Company is dispensed with.

14. The Applicant Companies submit that:

a) Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Transferee Company are not adversely affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Transferee Company.

b) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and will continue to remain highly positive post-merger;

c) The existence of the Transferee Company will remain as before without any change in its shareholding pattern pursuant to the Scheme.

d) No undertaking of the Transferor Company is being parted away or being disposed-off and hence provisions of section 180 of the Companies Act, 2013 are also not applicable;

15. The Learned Authorised Representative for the Applicants further submits that in view of above, no reconstruction or arrangement happens with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting of the Applicant Company 2/ the Transferee Company for approval of the proposed Scheme in view of ratio laid down by this Tribunal in CA(CAA) No 243 of 2017 in the matter of Housing Development Finance Corporation Limited; in CA(CAA) No. 915 of 2017 in the matter of Godrej Consumer Products Limited; in CA(CAA) No. 899 of 2017 in case of Mahindra CIE Automotive Limited; in CA(CAA) No. 1019 of 2017 in case of Godrej Properties Limited; in CA(CAA) No. 1615 of 2018 in case of Dolvi Minerals and Metals Private Limited; in CA(CAA) No. 396 of 2019 in JSW Logistic Infrastructure Private Limited; in CA(CAA) No. 1611 of 2019 in CEAT Specialty Tyres Limited; in CA(CAA) No. 3123 of 2019 in JAI Corp Limited and in CA(CAA) No. 4149 of 2019 in Godrej Properties Limited and in various other matter including the judgement of the National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) No. 19 of 2021 in the matter of Ambuja Cements Limited. The Transferee Company submits that the facts in the present case are similar to the facts of above cases therefore no meeting of shareholders and/or creditors of the Transferee Company are required to be convened. This Bench is of the view that the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company be dispensed with since the Transferor Company is a wholly-owned subsidiary of the Transferee Company.

16. The Applicant Companies to serve the notice of the present Application complete with enclosures upon –

(a) the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai,

(b) Registrar of Companies, Mumbai

(c) Securities and Exchange Board of India,

(d) National Stock Exchange of India Limited,

(e) BSE Ltd,

pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notices it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Applicant Companies to serve the notice of the present Application

complete with enclosures on the following Income Tax and GST Authorities within whose jurisdiction the respective applicant companies are assessed to tax clearing indicating PAN of the concerned Company, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:

Name of Company

PAN

Income Tax Jurisdiction

Transferor Company

AACCJ0461D

Circle 2(2)(1), Aayakar Bhawan, Mumbai

Transferee Company

AAACJ3213B

Circle 2(2)(1), Aayakar Bhawan, Mumbai

If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Transferor Company to serve notice upon the Official Liquidator, Mumbai pursuant to Section 230(5) of the Companies Act, 2013. If no response is received by the concerned Tribunal from Official Liquidator within 30 days, it may be presumed that Official Liquidator, Mumbai has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Applicant Companies to file affidavit of service within 15 (fifteen) days from the last of the compliances as stated in above paragraphs are made and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.