(2024) 02 NCLT CK 0058

In the National Company Law Tribunal

Case No : CA (CAA) No. 51/Chd/HP of 2023 (1st Motion)

K S Nutritions and Food Pvt Ltd Vs

Date of Decision : 28-02-2024

Acts Referred:

Companies Act, 2013 — Section 52, 66, 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(7), 232, 232(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2024) 02 NCLT CK 0058

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Kartikeya Goel,

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

Subrata Kumar Dash, Member (Technical)

1. This is a joint First Motion Application filed by Applicant Companies namely; K S Nutritions and Food Pvt Ltd (for short hereinafter referred to as Applicant Company No. 1/Transferor Company No. 1), VPA Foods Pvt Ltd (for short hereinafter referred to as Applicant Company No. 2/Transferor Company No. 2), Baalganpati Enterprises Pvt Ltd (for short hereinafter referred to as Applicant Company No. 3/Demerged Company No. 1), Anadidev Enterprises Pvt Ltd (for short hereinafter referred to as Applicant Company No. 4/Demerged Company No. 2) and Dhansamridhi Finance Pvt Ltd (for short hereinafter referred to as Applicant Company No. 5/Transferee Company/Resulting Company) under Sections 230 & 232 of the Companies Act, 2013, read with Section 52 and 66 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Composite Scheme of Arrangement among the Applicant Companies. The said Scheme is attached as Annexure A-7 of the

Application.

2. The Applicant Companies have prayed for dispensing with the requirement of convening meetings of the Equity Shareholders of the Transferor Companies No. 1 & 2, the Demerged Companies No. 1 & 2 and the Transferee Company/ Resulting Company; and Unsecured Creditors of the Transferor Company No. 1, the Demerged Companies No. 1 & 2 and the Transferee Company/Resulting Company. None of the Applicant the Transferor Companies No. 1 & 2, the Demerged Companies No. 1 & 2 and the Transferee Company/Resulting Company has any Secured Creditor. The Transferor Company No. 2 does not have any Unsecured Creditor as well.

3. The Applicant Transferor Companies No. 1 & 2 are engaged in purchase, sale and trading of agriculture commodities, food products and other related activities. The Transferor Company No. 1 has also made investments in shares and the Applicant Transferor Company No. 2 has made investments in bank FDRs.

4. The Applicant Demerged Companies No. 1 & 2 are primarily engaged in purchase, sale and trading of agriculture commodities, food products and other related activities. The Companies have also made investment in securities and Mutual Funds and have provided loans and advances. Thus, the Demerged Companies No. 1 & 2 have two distinct activities, viz., commodities trading and securities investments.

5. The Applicant Transferee Company/Resulting Company is engaged in investment in shares and other securities, providing loans and advances and other related activities. The Company is registered with the Reserve Bank of India (RBI) as a non-deposit accepting Non-Banking Financial Company (NBFC).

6. It is submitted that the registered office of the Transferor Companies, the Demerged Companies and the Transferee Company are situated in the State of Himachal Pradesh and hence are under the territorial jurisdiction of this Bench.

7. The rationale of the Scheme is given below:

The circumstances that justify and/or necessitate the proposed Composite Scheme of Arrangement of K S Nutritions and Food Pvt Ltd, VPA Foods Pvt Ltd, Baalganpati Enterprises Pvt Ltd Anadidev Enterprises Pvt Ltd and Dhansamridhi Finance Pvt Ltd; and benefits of the proposed Demerger and Amalgamation as perceived by the Board of Directors of these Companies, to the Shareholders and other stakeholders are, inter alia, given below:

7.1 The circumstances which justify and/or necessitate the proposed Demerger of Investment Business of Baalganpati Enterprises Pvt Ltd and Anadidev Enterprises Pvt Ltd Into Dhansamridhi Finance Pvt Ltd are, inter alia, as follows:

i. The Demerged Companies No. 1 & 2 are primarily engaged in purchase, sale and trading of agriculture commodities, food products and other related activities. The Company has also made investment in securities and Mutual

Funds and provided loans and advances. Thus, the Company has two distinct activities, viz., commodities trading and securities investments.

ii. The Management is proposing to hive off the Investment Business of the Demerged Company into the Resulting Company to segregate the same from core business activities of manufacturing and selling of auto components.

iii. The proposed Demerger will enable better management focus on both the business. It will facilitate administrative convenience and will ensure optimum utilization of various resources by these Companies.

iv. The proposed Demerger will provide scope for independent expansion of various businesses. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business.

v. The proposed Demerger will enable the Demerged Company and the Resulting Company to raise necessary funds, invite strategic investors and other stakeholders for their respective businesses.

vi. The proposed Demerger will have a beneficial impact on the Demerged Company and the Resulting Company, their employees, shareholders and other stakeholders and all concerned.

7.2 The circumstances which justify and/or necessitate the proposed amalgamation of K S Nutritions And Food Pvt Ltd and Vpa Foods Pvt Ltd With Dhansamridhi Finance Pvt Ltd are, inter alia, as follows:

i. Both the Transferor and Transferee Companies are closely held un-listed Group Companies under common management and control. The proposed amalgamation of the Transferor Company with the Transferee Company would result in consolidation of Group Companies and pooling of their resources into a single entity.

ii. The proposed Amalgamation will streamline and simplify the shareholding structure.

iii. The proposed Amalgamation would result in pooling of physical, financial and human resources of these Companies for the most beneficial utilization of these factors in the combined entity.

iv. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.

v. The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferee Company as well as by the Transferor Company.

vi. The proposed amalgamation would enhance the shareholders? value of the Transferor and the Transferee Companies.

vii. The proposed Scheme of Amalgamation will have a beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

7.3 The Scheme of Arrangement is proposed for the aforesaid reasons. The Board of Directors and Management of the Demerged Company, the Resulting Company/Transferee Company and the Transferor Company are of the opinion that the proposed Scheme is in the best interest of these Companies, their Shareholders and other stakeholders.

8. It is stated that the Board of Directors of the Applicant Transferor Companies, the Demerged Companies and the Transferee Company in their respective meetings held on 12th September, 2023, considered and unanimously approved the proposed Composite Scheme of Arrangement subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of the Applicant Companies No. 1, 2, 3 & 4 are attached as Annexure: A-1/5; Page 146 to 150, A-2/5; Page 225 to 229, A-3/5; Page 321 to 325, A-4/5; Page 427 to 431 and A-5/4; Page 541 to 545, respectively with the application.

9. The appointed date of the Scheme for the purpose of the Arrangement shall be 1st April, 2023, as mentioned in Clause 1.4 of Composite Scheme of Arrangement which is attached as Annexure: A-7 of the application.

10. It is stated that all the Applicant Companies have filed their Audited Financial Statements for the year ended 31st March, 2023 along with Additional Affidavit dated 11th January, 2024.

11. It is submitted that no corporate debt restructuring is envisaged in the proposed Composite Scheme of Arrangement.

12. It is further submitted that in pursuance of the proviso to Section 230(7) and Section 232(3) of the Companies Act, 2013 read with Section 52 and 66 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, the Applicant Transferor Companies No. 1 & 2 have filed their certificate dated 22.09.2023, the Applicant Demerged Companies No. 1 & 2 have filed their certificate dated 27.09.2023 and 25.09.2023, respectively, and the Applicant Transferee Company/Resulting Company has filed certificate dated 22.09.2023 issued by their respective Statutory Auditors certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure: A-8 with the application.

13. It is further submitted by the counsel for the Applicant Companies that as

per Valuation Report/Share Exchange Ratio Report dated 05.07.2023 submitted by Mr Shivanand Chaudhary, Chartered Accountant and Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI) vide Registration No. IBBI/RV/06/2020/13074 is attached as Annexure A-6. The Share Exchange Ratio is given below:

13.1 Share Exchange Ratio for Amalgamation:

· The Transferee Company-Dhansamridhi Finance Pvt Ltd will issue 1195 (one thousand one hundred and ninety-five) Equity Shares of ☐ 10 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 1 for every 10000 (ten thousand) Equity Shares of ☐ 10 each held in the Transferor Company No. 1-K S Nutritions and Food Pvt Ltd.

· The Transferee Company-Dhansamridhi Finance Pvt Ltd will issue 45823 (forty-five thousand eight hundred and twenty-three) Equity Shares of ☐ 10 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 2 for every 10000 (ten thousand) Equity Shares of ☐ 10 each held in the Transferor Company No. 2-VPA Foods Pvt Ltd.

13.2 The Share Exchange Ratio for Demerger is given below:

· The Transferee Company/Resulting Company-Dhansamridhi Finance Pvt Ltd will issue 6021 (six thousand and twenty-one) Equity Shares of ☐ 10 each, credited as fully paid-up, to the Equity Shareholders of the Demerged Company No. 1, for every 10000 (ten thousand) Equity Shares of ☐ 10 each held in the Demerged Company No. 1-Baalganpati Enterprises Pvt Ltd.

· The Transferee Company/Resulting Company-Dhansamridhi Finance Pvt Ltd will issue 5936 (five thousand nine hundred and thirty-six) Equity Shares of ☐ 10 each, credited as fully paid-up, to the Equity Shareholders of the Demerged Company No. 2, for every 10000 (ten thousand) Equity Shares of ☐ 10 each held in the Demerged Company No. 2-Anadidev Enterprises Pvt Ltd.

· Any fraction of share arising out of the aforesaid share exchange process, if any, will be rounded off to the nearest whole number.

14. It is submitted by the learned counsel that the Scheme (Annexure A-7) also takes care of the interest of the staff/workers and employees of the Applicants the Transferor Companies No. 1 & 2 and Demerged Companies No. 1 & 2 by virtue of Clause 2.6 and 3.7, respectively.

15. The authorised signatories of the Applicant Companies have deposed by way of affidavits that all the Transferor Companies, the Demerged Companies and the Transferee Company are closely held unlisted companies. All the Companies are Group Companies under common management and control. The aforesaid affidavits of the authorised signatories are filed along with the application.

16. It is deposed by the authorised representative of Applicant Companies that there are no material investigations or legal proceedings pending against any of

the Applicant Companies under Section 210 to 227 of the Companies Act, 2013 and Section 235 to 251 of the Companies Act, 1956 or any other applicable law. Moreover, there are no proceedings pending under the Companies Act, 2013 before the jurisdictional Adjudicating Authority.

17. The Applicant Companies have furnished the following documents:

i. Proposed Composite Scheme of Arrangement (Annexure A-7 of the application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Transferor Companies No. 1 & 2, Demerged Companies No. 1 & 2 and the Transferee Company/Resulting Company (Annexure A-1/1, A-2/1, A-3/1, A-4/1 and A-5/1 respectively of the application).

iii. List of Equity Shareholders of the Applicant Transferor Companies No. 1 & 2, Demerged Companies 1 & 2 and the Transferee Company/Resulting Company as on along with consent affidavits (Annexure A-1/6, A-2/6, A-3/6, A-4/6 and A-5/5 respectively of the application).

iv. Nil lists of Secured Creditors of the Applicant Transferor Companies No. 1 & 2 as on 31.03.2023 duly certified by Chartered Accountants (Annexure A-1/7 and A-2/7 respectively of the application).

v. Nil lists of Secured Creditors of the Applicant Demerged Companies No. 1 & 2 as on 31.03.2023 duly certified by Chartered Accountants (Annexure A-3/7 and A-4/7 respectively of the application).

vi. Nil lists of Secured Creditor of the Resulting Company/Transferee Company as on 31.03.2023 duly certified by Chartered Accountants (Annexure A-5/6 of the application)

vii. List of Un-secured Creditors of the Applicant Transferor Company No. 1 as on 31.03.2023 duly certified by Chartered Accountants along with consent affidavits (Annexure A-1/8 of the application).

viii. Nil list of Un-secured Creditors of the Applicant Transferor Company No. 2 as on 31.03.2023 duly certified by Chartered Accountants (Annexure A-2/8 of the application).

ix. List of Un-secured Creditors of the Applicant Demerged Companies No. 1 & 2 as on 31.03.2023 duly certified by Chartered Accountants along with consent affidavits (Annexure A-3/8, A-4/8 respectively of the application).

x. List of Un-secured Creditors of the Applicant Transferee Company/Resulting Company as on 31.03.2023 duly certified by Chartered Accountants along with consent affidavits (Annexure A-5/7 of the application).

xi. Certificates of Statutory Auditors to the effect that the Accounting treatment proposed in the Scheme is in conformity with Section 133 of the Companies Act, 2013 (Annexure A-8 of the application).

xii. Audited Financial Statements for the year ended 31st March, 2023 along with Additional Affidavit dated 11th January, 2024 for all the Applicant Companies.

18. It is deposed by the Applicant Companies that there are no sectoral regulator in the Applicant Companies whose approval may be required for the sanction of the Composite Scheme of Arrangement except the statutory authorities i.e. (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, NCT of Delhi and Haryana, New Delhi; (c) the Official Liquidator, Haryana, Chandigarh; (d) the Income Tax Department; and (e) the Reserve Bank of India, Chandigarh. It is also deposed that the proposed Composite Scheme of Arrangement will not attract the provisions of the Competition Act, 2002. Hence, no intimation to/approval from the Competition Commission of India (CCI) is required for the present Scheme of Arrangement. There are no legal proceedings, inquiry, inspection, investigation, prosecution, litigation pending before any court of law or Tribunal against the Applicant Companies.

19. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors as follows:

Company

No. of

Share Holders

Consent Given

No. of

Secured Creditors

Consent Given

No. of

Un-secured Creditors1

Consent Given

Transferor

Company No. 1

3

All

Nil

N.A.

2

All

Transferor

Company No. 2

2

All

Nil

N.A.

Nil

N.A.

Demerged

Company No. 1

4

All

Nil

N.A.

1

All

Demerged

Company No. 2

4

All

Nil

N.A.

4

All

Transferee

Company/Result ing Company

16

All

Nil

N.A.

9

7

99.67% of

total value

1 In addition to the aforesaid Un-secured Creditors, the Transferor Companies No. 1 & 2, the Demerged Companies No. 1 & 2 and the Transferee Company/ Resulting Company had some ?Statutory and Other Dues? which have either been paid in full or being provision in nature, are not due for payment as on the date of this Application. Certificates from the Chartered Accountants confirming the same are enclosed.

20. Accordingly, the directions of this Bench in the present case are as under:

I. In relation to Applicant Transferor Company No. 1:

a. The meeting of the Equity Shareholders of Applicant Transferor Company No. 1 is dispensed herewith, keeping in view that all the Equity Shareholders have given their consents by way of affidavits;

b. Since, there are no Secured Creditors in the Applicant Transferor Company No. 1, therefore there is no scope of any meeting.

c. The meeting of the Unsecured Creditors of the Applicant Transferor Company No.1 is dispensed herewith, keeping in view that consent of all the Unsecured Creditors have have been received by way of affidavits.

II. In relation to Applicant Transferor Company No. 2:

a. The meeting of the Equity Shareholders of Applicant Transferor Company No. 2 is dispensed herewith, keeping in view that all the Equity Shareholders have given their consents by way of affidavits;

b. Since, there are no Secured Creditor in the Applicant Transferor Company No. 2, therefore there is no scope of any meeting.

c. Since, there is no Unsecured Creditor in the Applicant Transferor Company No. 2, therefore there is no scope of any meeting.

III. In relation to Applicant Demerged Company No. 1:

a. The meeting of the Equity Shareholders of Applicant Demerged Company No. 1 is dispensed herewith, keeping in view that all the Equity Shareholders have given their consents by way of affidavits;

b. Since, there are no Secured Creditors in the Applicant Demerged Company No. 1, therefore there is no scope of any meeting.

c. The meeting of the sole Unsecured Creditor of the Applicant Demerged Company No. 1 is dispensed herewith, keeping in view that sole Unsecured Creditor has given its consent by way of affidavit.

IV. In relation to Applicant Demerged Company No. 2:

a. The meeting of the Equity Shareholders of Applicant Demerged Company No. 2 is dispensed herewith, keeping in view that all the Equity Shareholders have given their consents by way of affidavits;

b. Since, there are no Secured Creditors in the Applicant Demerged Company No. 2, therefore there is no scope of any meeting.

c. The meeting of the Unsecured Creditors of the Applicant Demerged Company No. 2 is dispensed herewith, keeping in view that all the Unsecured Creditor have given their consents by way of affidavits.

V. In relation to Applicant Resulting Company/Transferee Company:

a. The meeting of the Equity Shareholders of Applicant Resulting Company/ Transferee Company is dispensed herewith, keeping in view that all the Equity Shareholders have given their consents by way of affidavits;

b. Since, there is no Secured Creditor in the Applicant Resulting Company/ Transferee Company, therefore there is no scope of any meeting.

d. The meeting of the Unsecured Creditors of the Applicant Resulting Company/ Transferee Company is dispensed herewith, keeping in view that Unsecured Creditors constituting 99.67% (in value) of the total value have given their consents by way of affidavits.

21. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, NCT of Delhi and Haryana, New Delhi; (c) the Official Liquidator, Haryana, Chandigarh; (d) the Income Tax Department; and (e) the Reserve Bank of India, Chandigarh by disclosing the PAN of all the Applicant Companies in the title of the Second Motion Petition. Further, the applicant companies are directed to file the latest financial statements with the second motion petition.

