(2023) 07 NCLT CK 0058

In the National Company Law Tribunal

Case No : CA No 132/2023 In CP (CAA) No. 60/Chd/Hry/2022

Kapbros Engineering Industries Limited Vs

Date of Decision : 27-07-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232, 232(3)(i)
Income Tax Act, 1961 — Section 170 (2A)

Citation : (2023) 07 NCLT CK 0058

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

Bench : Division Bench

Advocate : G.S. Sarin, Saheb Singh Chadha, Gauri Neo Rampal

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

CA No 132/2023

1. The present application is filed by Petitioner companies to place on record the report of the Income Tax Department in respect of the Transferor Company No. 1 and the same is taken on record. Thus, CA No. 132/2023 is allowed and disposed of accordingly.

CP (CAA) No. 60/Chd/Hry/2022

2. This is a second motion Petition filed by Petitioner Companies namely;

Kapbros Engineering Industries Limited (Petitioner Company 1 /Transferor Company 1), Magpie Manufacturing and Tech Private Limited (Petitioner Company 2 /Transferor Company 2) and ASN Manufacturing and Services Private Limited (Petitioner Company 3 /Transferee Company) under sections 230 & 232 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").

3. The Petitioner Companies have prayed for sanctioning of the Scheme of

Amalgamation amongst the respective companies. The said Scheme of Amalgamation is attached as Annexure– A of the petition.

4. The joint first motion application seeking directions for convening/dispensing with the requirement of the meetings of Equity Shareholders, Secured and Unsecured Creditors of the respective Applicant Companies was filed before this Tribunal by Company Application No. 22/Chd/Hry/2022 and based on such application necessary directions were issued on 10.08.2022. In the order dated 10.08.2022, the meetings of Equity Shareholders, Secured and Unsecured Creditors of all the Applicant Companies were dispensed with for the reasons mentioned in the aforesaid order.

5. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme of Amalgamation had been discussed in detail in the order dated 10.08.2022.

6. In the second motion proceedings, certain directions were issued by this Tribunal vide order dated 13.09.2022 and in compliance of such directions, the Petitioners have filed joint affidavit of compliance by Diary No. 01946/1 dated 06.10.2022. The notice of hearing was published in "Business Standard" (English, Delhi NCR Edition) and "Jansatta" (Hindi, Delhi NCR Edition) both dated 30.09.2022. The copies of the newspapers are attached as Annexure F of the aforesaid affidavit. It has also stated in the affidavit that copies of notices were served upon a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; New Delhi; (b) Concerned Registrar of Companies, (c) the Official Liquidator; and (d) Jurisdictional Income Tax Authorities through the Nodal Officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by way of Speed Post. Copies of speed post receipts along with tracking reports are attached as Annexure "B" to Annexure "E" of the aforesaid affidavit.

7. It is also deposed by the Advocate of the Petitioner Companies that after the publication of advertisement in the newspapers no objection has been made by anyone against the proposed Scheme of Amalgamation. The aforesaid affidavit has been filed by the Advocate for the petitioner companies by diary No. 01946/3 dated 14.12.2022.

8. In response to the abovementioned notices, the statutory authorities have furnished their Reports as under:

8.1 Registrar of Companies (ROC)/Regional Director (RD)

8.1.1 The Regional Director (RD) has submitted its report along with the report of Registrar of Companies (ROC) by Diary No. 01946/5 dated 19.12.2022. Para 10 of the report of Regional Director has set out 2 (two) observations as made in para 32 of the RoC report dated 28.11.2022 with regard to the fees payable by Transferee Company on its authorized capital subsequent to the amalgamation. The Registrar of Companies has also made certain comments on the short-term loans and advances as per audited financial statements of Transferee Company for the F.Y. 2020-21 stating that the amount of Short term loan remains same as in the previous year. Hence, the loan is not short term.

8.1.2 In response to the aforesaid observation made by the RD, the Petitioner Companies have filed an affidavit by Diary No. 01946/6 dated 29.12.2022 wherein it has been undertaken by the Transferee Company that it shall comply with the provisions of section 232(3)(i) of the Companies Act, 2013 and shall pay the requisite fees, as applicable, on the revised authorised share capital after claiming set-off of the fees already paid by the Transferor Company on its Authorized Share Capital. Further, the Company has replied that the short-term loans and advances was granted by the Transferee Company as loan payable on demand. As per the instructions issued by the Ministry of Corporate Affairs in relation to the preparation of Financial Statements, It is stated that "an asset shall be classified as "current asset if it is expected to be released within 12 months after the reporting date". It is submitted that the ministry has used the term 'expects to release' and not the actual realisation. The management had the intention to release the loan amount within 12 months. However, due to the impact of Covid-19, the said amount was not demanded by the Transferee Company. Hence, the amount remained as "Short-Term Loans and Advances" in the Financial statements of 2021-22. Moreover, the said observation has no bearing on the proposed amalgamation.

8.1.3 In view of the above discussion, no adverse conclusion is drawn on the basis of the report of the regional director.

8.2 Official Liquidator

8.2.1 The Official Liquidator has filed his report by Dairy No. 01946/2 dated 12.12.2022 wherein it has not raised any objection to the sanction of the Scheme of Amalgamation. The Official Liquidator in its report has reproduced the information on the incorporation of the petitioner companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the petitioner companies on the Financial Statements.

8.2.2 Thus, no adverse observation can be inferred from the report of the Official Liquidator.

8.3 Income Tax Department

8.3.1 The Income Tax Department has furnished its report in respect of the Transferee Company to this Tribunal vide Diary No. 01946/4 dated 03.01.2023 stating that vide Diary No.0404116020042023 on June 14, 2023, it is stated that no enquiry and no inspection is pending in respect of all the Petitioner Companies and a demand amounting to Rs. 26,13,480/- is pending in respect of Transferee Company. The Income Tax Department has no objection to the Scheme of Amalgamation.

8.3.2 Thus, no adverse observation can be inferred from the report of the Income Tax Department.

9. The certificate of the Statutory Auditors with respect to the Scheme amongst the petitioner companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Accounting Standards (AS) 14 as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexure –C4, Annexure- D4 and Annexure-E4 of the petition.

10. We have heard the learned Counsel for petitioner companies and learned Senior Standing Counsel for the Income Tax Department and others and have perused the records carefully.

11. In the context of the above discussion, the proposed Scheme contemplated amongst the petitioner companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant sections of the Companies Act, 2013. As the representation from the Statutory Authorities has been duly addressed by the petitioner companies and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the proposed Scheme of Amalgamation appended as Annexure-A of the Petition.

12. Notwithstanding the submission that no investigation is pending against any of the petitioner companies, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

13. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

i. That all the properties, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Transferor Companies transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies is entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts of the Transferor Companies which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

v. That the employees of the Transferor Companies shall be transferred to the Transferee Company in terms of the 'Scheme';

vi. That the Appointed Date for the scheme shall be 01.04.2021 as specified in the scheme;

vii. That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;

viii. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;

ix. That the fee, if any, paid by the Transferor Companies on their respective authorized share capital shall be set off against any fees payable by the Transferee Company on its combined authorized capital subsequent to the sanction of the 'Scheme';

x. That the Transferee Company shall file the revised memorandum and articles of association with the Registrar of Companies, NCT of Delhi & Haryana for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Companies;

xi. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Companies and Transferee Company shall be consolidated accordingly, as the case may be; and

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

14. As per the aforesaid directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioners to the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order.

15. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

16. The Company Petition CP (CAA) 60/Chd/Hry/2022 is allowed and disposed of accordingly.

