(2022) 08 NCLT CK 0017

In the National Company Law Tribunal

Case No : CA (CAA) No.34/Chd/Pb/2022 (1st Motion)

Karun Carpets Private Limited Vs

Date of Decision : 18-08-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(3), 230(5), 232, 232(2)(e), 232(3)
Companies Act, 2019 — Section 102
Companies (Compromises Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8, 14

Citation : (2022) 08 NCLT CK 0017

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

Bench : Division Bench

Advocate : Dhritiman Bhattacharyya

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint First Motion Application filed by Applicant Companies namely; Karun Carpets Private Limited (for short hereinafter referred to as Applicant Company No.1/Transferor Company); and DBH Holdings (India) Private Limited (for short hereinafter referred to as Applicant Company No.2/Transferee Company) under Section 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) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure-A of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement for convening the meetings of the Equity Shareholders of Applicant Company No.2 and of Secured and Unsecured Creditors of both Applicant Companies. It is further prayed to convene the meeting of Equity Shareholders of the Applicant Company No.1.

3. The Applicant Company No.1/Transferor Company is presently engaged in the

business of making investments in listed and unlisted equity and debt instruments of companies in a wide range of industries, preference shares, mutual funds, alternate investment funds etc. Karun Carpets Private Limited (KCPL) also holds investments in its subsidiaries, engaged in a wide array of businesses in the non-financial service sector.

4. The Applicant Company No.2/Transferee Company is presently engaged in the business of an investment company and to invest in, and acquire and hold, sell, buy, or otherwise deal in shares, debentures, debenture-stocks, bonds, units, obligations and securities issued or guaranteed by Indian or Foreign Governments, States, Dominions, Sovereigns, Municipalities, or Public Authorities or Bodies and shares, stocks, debentures, debenture-stocks, bonds, obligations and securities issued and/or guaranteed by any company, corporation, firm or person whether incorporated or established in India or elsewhere etc.

5. It is submitted that the registered offices of the Applicant Companies are situated in the State of Punjab and, therefore, all the applicant companies are under the territorial jurisdiction of this Bench.

6. The rationale of the Scheme is given below:-

(a) Ensure a simplified and streamlined group structure by reducing the number of entities in the group structure resulting in more efficient & transparent structure;

(b) Eliminating duplicative communication and co-ordination efforts across multiple entities resulting in effective communication and co-ordination across stakeholders; and

(c) Reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company. Further, the consolidation will also lead to reduction in operational and compliance cost.

7. It is stated that the Board of Directors of Applicant Companies in their respective meetings held on 18.05.2022 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of Applicant Companies are attached as Annexure-I and Annexure-R, respectively of the application.

8. The appointed date of the Scheme is 01.04.2022 as mentioned in Part-A Clause 1(b) of Scheme of Amalgamation which is attached as Annexure-A of the application.

9. It is stated that Applicant Companies have filed the audited financial statements as on 31.03.2021 which are attached as Annexure-F and Annexure-O, respectively of the application. The Applicant Companies have filed the provisional financial statements as on 31.12.2021 which are attached as Annexure-G and Annexure-P respectively of the application.

10. It is further submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, Applicant Companies have filed the certificates dated 19.05.2022 issued by statutory auditors of applicant companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure-X of the application.

11. It is further submitted by the counsel for applicant companies that as per Valuation Report/Share Exchange Ratio Report dated 25.04.2022 submitted by Mr. Mukesh Chand Jain, Registered Valuer (S&FA) bearing registration No.IBBI/ RV/05/2020/13666 is attached as Annexure-B of the application. The Share Exchange Ratio is given below:-

"Accordingly, the Fair Equity Share Exchange Ration has been arrived as follows:-

For Class A Equity Shareholders, 783 equity shares of DBH Holdings (India) Private Limited (DBH) for every 10 equity shares held in Karun Carpets Private Limited (KCPL).

For Class B Equity Shareholders, 900 equity shares of DBH Holdings (India) Private Limited (DBH) for every 10 equity shares held in Karun Carpets Private Limited (KCPL)"

12. It is averred that the Transferor Company is registered with the Reserve Bank of India as a non-deposit taking NBFC vide certificate dated December 2, 2016 (the said certificate is already annexed to this application as Annexure C) and has already received permission for the present Scheme of Amalgamation from the Reserve Bank of India vide its letter dated 12.04.2022. The said permission of Reserve Bank of India vide its letter dated 12.04.2022 is attached as Annexure-W of the application. The Transferee Company, as on date does not qualify as an NFBC, upon sanction of this Scheme since the Transferee Company will absorb the entire business of the Transferor Company, the Transferee Company will qualify as an NBFC. The Transferee Company is already in the process of obtaining registration as an NBFC with the Reserve Bank of India.

13. It is submitted by the learned counsel that the Scheme (Annexure-A) also takes care of the interests of the staff/workers and employees of the Applicant Companies, by virtue of Part-C Clause 10 of the Scheme.

14. It is deposed by the authorised representative of Applicant Companies that there are no investigation or proceedings under the Companie Act, 1956/ Companies Act, 2013 or the Insolvency & Bankruptcy Code, 2016, have been instituted or are pending in relation to Applicant Companies and no legal proceedings are pending which have a material bearing effect on the aspect of sanctioning of the Scheme. It is further deposed that the proposed Scheme is not a corporate debt restructuring Scheme and it does not envisage any reduction of share capital of Transferee Company except cancellation of cross-holding of shares between Transferor Company and Transferee Company. The Transferor Company is registered with Reserve Bank of India as a non-deposit taking NBFC

vide certificate dated 02.12.2016 and has already received requisite permission for the present Scheme of Amalgamation from the Reserve Bank of India and since the Transferee Company will absorb the business of the Transferee it is in the process of obtaining NBFC registration. Moreover, the Scheme does not get covered under the ambit of CCI guidelines. The aforesaid affidavit is attached at pages 272 to 274 of the application.

15. The Applicant Companies have furnished the following documents:-

i. Proposed Scheme of Amalgamation (Annexure-A of the application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure-E and N, respectively of the application).

iii. List of Equity Shareholders of the Applicant Companies as on 31.03.2022 duly certified by VGG & Co. Chartered Accountants (Annexure-J and S, respectively of the application).

iv. Consent Affidavit of Equity Shareholder of the Applicant Company No.2 (Annexure-T of the application).

v. List of Secured Creditors of the Applicant Companies as on 31.03.2022 duly certified by VGG & Co. Chartered Accountants (Annexure-L and V, respectively of the application).

vi. List of Unsecured Creditors of the Applicant Companies as on 31.03.2022 duly certified by VGG & Co. Chartered Accountants (Annexure-K and U, respectively of the application).

vii. 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-X of the application).

viii. Audited Financial Statement as on 31.03.2021 of the Applicant Company No.1 and 2 (Annexure-F and O, respectively of the application).

ix. Provisional Financial Statements for the period ended on 31.12.2021 of the Applicant Company No.1 and 2 (Annexure-G and P, respectively of the application).

x. Proposed Share Exchange Ratio (Annexure-B of the application).

xi. Affidavits stating that there are no legal proceedings against the Applicant Companies (Pages 272-274 of the application).

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

Name of the Applicant

Companies

Shareholders along with their consent on affidavit

Creditors along with their consents on affidavit

Equity

Consents

Secured

Consents

Unsecured

Consents

Shareholders

submitted

Creditors

submitted

Creditors

submitted on

on affidavit

on

affidavit

affidavit

Applicant

8 (Eight)

Nil

Nil

NA

Nil

NA

Company No.1

(meeting

to be

convened)

Applicant

Company No.2

2

(Two)

99.98%

in value

Nil

NA

Nil

NA

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

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

a. The meeting of the Equity Shareholders of the Applicant Company No.1/ Tranfseror Company be convened as prayed for on 15.10.2022 at 10:00 AM through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the Equity Shareholders shall be 4 in number or 40 % in value of the Equity Shareholders;

b. Since, there are no Secured Creditors and no Unsecured Creditors in the Applicant Company No.1/Transferor Company. Therefore, there is no scope for any meeting.

II. In relation to Applicant Company No.2/Transferee Company:

a. The meeting of the Equity Shareholders is dispensed with keeping in view the shareholding and ownership pattern of the company and the fact that the consent by way of affidavit has been received from the major shareholder ;

b. Since, there are no Secured Creditors and no Unsecured Creditors in the Applicant Company No.2/Transferee Company. Therefore, there is no scope for any meeting.

III. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.

IV. Mr. Randeep Singh Rai, Senior Advocate, address: House No.162, Sector 9B, Chandigarh - 160009, Mobile No.9814089853, email id:randeeprai@yahoo.com, is appointed as the Chairperson for the meeting to be called under this order. An amount of ☐ 2,00,000/- (Rupees Two Lakhs Only) be paid for his services as the Chairperson.

V. Mr. Shikhar Sarin, Advocate, R/o House No.48, Sector-4, Chandigarh - 160001, Mobile No.8054126678, e-mail id:shikharsarin1@gmail.com, is appointed as the Alternate Chairperson for the meeting to be called under this order. An amount of ☐ 1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid for his services as the Alternate Chairperson.

VI. Ms. Deepali Garg, Practicing Company Secretary, address: House No.1526, Sector 18D, Chandigarh-160018, Mobile No.8527124636, email id:deepaligarg2@gmail.com, is appointed as the Scrutinizer for the above meeting to be called under this order. An amount of ☐ 1,00,000/- (Rupees One Lakh Only) be paid for her services as the Scrutinizer.

VII. The fee of the Chairperson, Alternate Chairperson, Scrutinizer and other out-of-pocket expenses for them shall be borne by the Applicant Company No.1.

VIII. It is further directed that individual notices of the said meetings shall be sent by Applicant Company No.1 through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and time as aforesaid, together with a copy of the Scheme, copy of the explanatory statement with Share Exchange Ratio as discussed in para 7 of this order required to be sent under the Companies Act, 2013 and the applicable Rules and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

IX. It is further directed that along with the notices, Applicant Company No.1 shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members, etc. along with the effect of the scheme of arrangement on any material interests of the Directors of the Company or the debenture trustees if any, as provided under sub-section (3) of Section 230 of the Act.

X. It is also directed that the Provisional Account statements of Applicant Companies as on 31.03.2022 or as on a subsequent date be also circulated for the aforesaid meeting(s) in terms of Section 232 (2) (e) of the Act.

XI. That the Applicant Company No.1 shall publish an advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and place and the time of the meeting as aforesaid, to be published in "Tribune"(English) and "Jagbani" (Punjabi) both in Chandigarh Edition. The publication shall also indicate that the explanatory statement required to be furnished pursuant to Sections 230 & 232 read with Section 102 of the Companies Act, 2019 can be obtained free of charge at the registered office of the Applicant Companies. The Applicant Company No.1 shall also publish the notice on its website, if any.

XII. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Companies under the Act and the Rules framed thereunder.

XIII. The Scrutinizer’s report will contain his/her findings on the compliance to the directions given in Para VII to XII above.

XIV. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. The Chairperson would be fully assisted by the authorized representative/Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Hon’ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XV. The Applicant Companies shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the “Rules” to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (ii) Jurisdictional Registrar of Companies; (iii) the Official Liquidator (attached to Punjab and Haryana High Court); (iv) Reserve Bank of India (RBI); and (v) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

XVI. The Applicant Companies shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.

XVII. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.

XVIII. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies

18. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.

