

(2020) 12 NCLT CK 0145

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 946/MB-IV Of 2020, Company Application (CAA) No. 4005, 4009, 4049/MB/C-IV Of 2019

Kripa Trading Private Limited And Ors. Vs

Date of Decision : 16-12-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232, 232(3)(i)

Citation : (2020) 12 NCLT CK 0145

Hon'ble Judges : Suchitra Kanuparthi, J;Rajesh Sharma, Member (Technical)

Bench : Division Bench

Advocate : Jay Mehta, Raveena Jain, AT Jain

Judgement

1. The Court convened through video conferencing today.
2. Heard the Learned Authorized Representative for the Petitioner Companies. No objector has come before this Tribunal to oppose the Petition nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232, and other applicable provisions of the Companies Act, 2013, to a Scheme of Amalgamation of Kripa Trading Private Limited, First Transferor Company, Purica Foods Private Limited, Second Transferor Company with Roop Commercials Private Limited, Transferee Company.
4. The Learned Authorized Representative for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies, at their respective meetings held on 9th October, 2019 have approved the Scheme of Amalgamation, and thereafter they have approached this Tribunal by the captioned Petition for sanction of the Scheme.
5. The Learned Authorized Representative submits that the First Petitioner Company is engaged in the business of trading in commodities. The

Second Petitioner Company is engaged in the business of manufacturing of food products and beverages. The Third Petitioner Company is engaged in the business of trading in commodities.

6. The Learned Authorized Representative for the Petitioner Companies submits that the Proposed Amalgamation of the Transferor Companies with the Transferee Company would, inter alia, have the following benefits:

- a) Consolidation of the business operations of the Transferor Companies and Transferee Company by way of amalgamation would lead to a more efficient utilization of resources and reduce administrative time and costs of managing multiple entities.
- b) Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities.
- c) The Scheme is expected to enable pooling of resources of the Transferor Companies and the Transferee Company resulting in more productive utilization of the said resources and cost and operational efficiencies which would be beneficial for all stakeholders.
- d) Benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization.
- e) Cost savings are expected to flow from more focused operational efforts, rationalization and standardization of administrative expenses.

7. The Learned Authorized Representative for the Petitioner Companies further submits that the Petition had been filed in consonance with the Order dated 12th June, 2020, passed by this Tribunal in the connected Company Applications No. C.A. (CAA) 4009/MB/C-IV/2019, C.A. (CAA) 4005/MB/C-IV/2019 and C.A. (CAA) 4049/MB/C-IV/2019.

8. The Learned Authorized Representative for the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and have filed necessary Affidavits confirming compliance.

9. The Regional Director, (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 17th September, 2020, stating that save and except as stated in paragraphs IV (a) to (d), the Regional Director has no other objection to the scheme.

10. In paragraphs IV (a) to (d) of the said Report, it has been stated that:

(a) In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection

with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.

(b) As per Definition of the Scheme,

“Appointed Date” for the purpose of this Scheme means 1st April, 2019 or such other date as may be decided by the National Company

Law Tribunal.

“Effective Date” shall mean the date on which certified copy of the Order of the Hon’ble NCLT sanctioning the Scheme is filed with

the Registrar of Companies, Mumbai, Maharashtra. Any reference in the Scheme to “upon the Scheme becoming effective” or

“effectiveness of the Scheme” shall mean the Effective Date.

“Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated

21.08.2019 issued by the Ministry of Corporate Affairs.

(c) Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is

dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the

transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the

provisions of the section.

(d) Para 14(iii) of Part-B of the Scheme which provides as under:

“The excess / deficit of net assets value (Fair value of Assets minus Fair value of liabilities) of the Transferor Companies transferred to

the Transferee Company after adjusting against the cost of investment in Second Transferor company by the First Transferor Company and

consideration paid by Transferee company as per Clause 12 of this scheme and after making adjustment as mentioned in sub-clauses 14.1

to 14.3 above, shall be debited to Goodwill or credited to Capital Reserve as the case may be”

In this regard, it is most respectfully submitted that the Capital Reserve if any so created shall not be used as a free reserve and it may be

shown as an amalgamation reserve and to be shown separately in the Financial Statement of the Transferee Company.

11. In response to the observations made by the Regional Director, the Petitioner Companies have clarified as under:

(a) As far as the observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies

undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with such accounting standards

notified under Section 133 of the Companies Act, 2013 as may be applicable to the Petitioner Companies (including AS-14 and AS-5).

(b) As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies

undertake that the Scheme will be effective from the respective Appointed Date, i.e., 1st April 2019, or such other date as may be decided by

the National Company Law Tribunal. Further, the Petitioners undertake to comply with the requirements clarified vide circular no. F. No.

7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs., as may be applicable to the Petitioner Companies.

(c) As far as the observations made in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies

undertake that the fee payable by the Transferee Company shall be in compliance with the provisions of Section 232(3)(i) of the Companies

Act, 2013.

(d) As far as the observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies

undertake that the Capital Reserve, if any, so created shall not be used as a free reserve and it may be shown as an amalgamation reserve

and to be shown separately in the Financial Statement of the Transferee Company.

12. The observations made by the Regional Director have been explained by the Petitioners in Paragraph 11 above. Moreover, the Petitioner

Companies, undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder

whichever is applicable. The clarifications and undertakings given by the Petitioners are accepted.

13. The Official Liquidator, High Court, Bombay, has filed his report dated 21st September, 2020, stating therein that the affairs of the Transferor

Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 946/MB/C-IV/2020 is made absolute in terms of the prayer clauses (a) to (e) in the said Company Petition.

16. The Scheme is hereby sanctioned, with the Appointed Date fixed as 1st April, 2019. The Transferor Companies be dissolved without winding up.

17. All concerned regulatory authorities to act on certified copy of the order and the form of minutes forming part of the Petition, duly certified by the Joint Registrar of this Tribunal.

18. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in with E-Form INC-28 within 30 days from the date of issuance of the certified copy of the Order by the Registry.

19. The Petitioner Companies are to lodge a copy of this order duly certified by the Joint Registrar of this Tribunal, with the concerned Superintendent of Stamps, for adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of the Order along with a copy of the scheme.

20. Ordered accordingly.