(2023) 01 NCLT CK 0053

In the National Company Law Tribunal

Case No : C.P. (CAA) No. 171/ KB /2022 Connected with C.A. (CAA) No. 95/ KB /2022

Libra Projects Private Limited Vs

Date of Decision : 17-01-2023

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(1), 230(6), 232, 232(3)

Citation : (2023) 01 NCLT CK 0053

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Sailendra Kumar Tiwari, Bijay Agarwal

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical):

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of Aryadeep Trexim Private Limited, being the Applicant No.1 above named ("Transferor Company" or "Applicant No. 1"), Banister Marketing Private Limited, being the Applicant No.2 above named ("Transferor Company" or "Applicant No. 2"), Capex Management Consultancy Private Limited, being the Applicant No.3 above named ("Transferor Company" or "Applicant No. 3"), Goldy Devcon Private Limited being the Applicant No.4 above named ("Transferor Company" or "Applicant No. 4"), Kulaga Marketing Private Limited being the Applicant No.5 above named ("Transferor Company" or "Applicant No. 5"), Marwah Properties Private Limited being the Applicant No.6 above named ("Transferor Company" or "Applicant No. 6"), MJB Tea Processing Private Limited being the Applicant No.7 above named ("Transferor Company" or "Applicant No. 7"), Yellow Valley Buildcon Private Limited being the Applicant No.8 above named ("Transferor Company" or "Applicant No. 8"), with Libra Projects Private Limited, being the Applicant No. 9 above named ("Transferee Company" or "Applicant No. 9") and whereby and where under the Transferor Companies are proposed to be

amalgamated with the Transferee Company from the Appointed Date, viz 1st day of April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

2. The Petition has now come up for final hearing. The Counsel for the Applicants submits as follows:-

(a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 2nd August, 2022.

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are inter alia as follows:-

i. All the Transferor Companies and the Transferee Company are engaged in similar kind of business.

ii. The Scheme of Amalgamation has been proposed to consolidate the group structure and provide advantages of synergies in business activities.

iii. The business of the Transferor Companies and the Transferee Company can be combined and carried forward conveniently with the combined strength of all the Petitioner Companies.

iv. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company;

v. The amalgamation will result in usual economies of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources and the business of the companies can be conveniently and advantageously combined together and in general business of the Companies concerned will be carried on more economically and profitably under the said Scheme of Amalgamation.

vi. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the Companies concerned. The aforesaid Scheme of Amalgamation will also enable the undertakings and business of the said Petitioner Companies to obtain greater facilities possessed and enjoyed by one large company compared with a number of small companies for raising capital, securing and conducting trade on favourable terms and other benefits;

vii. The said Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the companies concerned and in the growth and development of their businesses.

viii. The said Scheme of Amalgamation will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability.

ix. The said Scheme of Amalgamation will enable the undertakings concerned to pool their resources and to expand their activities.

x. The said Scheme of Amalgamation will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

xi. The said Scheme of Amalgamation will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

(c) The Statutory Auditors of all Transferor Companies (except Transferor Company No. 7) and Transferee Company have by their certificates dated 26th day of March, 2022 and the Statutory Auditors of Transferor Company No. 7 have by the certificate dated 29th day of March, 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

(e) The exchange ratio of shares in consideration of the amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Vikash Goel, Registered Valuer.

(f) The shares of the any Petitioners are not listed on any stock exchanges.

(g) By an order dated 22nd day of July, 2022 in Company Application (CAA) No. 95/KB/2022, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:

i. Meeting(s) dispensed: Meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act.

ii. Meeting to be held: No meeting is required to be held.

(h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 24th day of November, 2022 the instant petition was admitted by this Tribunal and fixed for hearing on 27th December, 2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order, the Petitioner(s) have duly served such notices on the:-

SERVICE MADE TO

MODE OF SERVICE

DATE OF SERVICE

PAGE NO.

Regional Director, Eastern Region, Kolkata

Hand Delivery

05-12-2022

Page No. 1-6 (Affidavit of service)

E-mail

06-12-2022

Registrar of Companies, West Bengal

Hand Delivery

05-12-2022

Page No. 7-12 (Affidavit of service)

E-mail

06-12-2022

Official Liquidator, High Court, Calcutta,

Hand Delivery

05-12-2022

Page No. 13-18 (Affidavit of service)

E-mail

06-12-2022

Income Tax Officer - Ward 1(1), 5(1), DC/ACIT, Circle 1(1) and Ward 1(1), Siliguri

Hand Delivery

05-12-2022

Page No. 19-42 (Affidavit of service)

E-mail

06-12-2022

Chief Commissioner of Income Tax, Kol- 01 and 02

Hand Delivery

05-12-2022

Page No. 43-54 (Affidavit of service)

E-mail

06-12-2022

The Petitioner(s) have also published advertisements in two newspapers viz.

“Financial Express” and “’Aajkaal’ on 10-12-2022. An affidavit of service in this regard has also been e-filed by them on 23-12-2022.

(i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata and the Official Liquidator, High Court, Kolkata have filed their representations before this Tribunal.

4. The Official Liquidator has also filed a Report dated 23rd day of December, 2022 wherein it has been stated that :

“…On the basis of the information submitted by the Petitioner Companies, the Official Liquidator is of the view that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interests of its members or to public interest as per the provisions of the Companies Act, 2013. Further, the Official Liquidator stated that the Tribunal may be pleased to pass such further order or orders as may be deem fit and proper in the matter”.

5. The Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), Kolkata vide his affidavit filed on 23rd day of December, 2022 has reported certain observations in respect whereof the Petitioner Companies have filed their rejoinder dated December 26, 2022. The said observations and the reply thereof is given underneath:-

Para 2(a) of the Regional Director’s Affidavit:

It is submitted that as per available records, it appears that no complaint and/ or representation has been received against the proposed Scheme of Amalgamation. Further all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the year ended 31-03-2022.

Para 3(a) of the Rejoinder:

Since the statements made in Para 2(a) of the Regional Director’s affidavit are general statements, hence no comments are required to the said statements.

Para 2(b) of the Regional Director’s Affidavit:

The Petitioner Companies should be directed to provide list/details of Assets, if any to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Para 3(b) of the Rejoinder:

The list/ details of Assets to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme is enclosed and marked as “ANNEXURE- A” to the rejoinder.

Para 2(c) of the Regional Director's Affidavit:

The Petitioner company should undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmations.

Para 3(c) of the Rejoinder:

The Petitioners undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

Para 2(d) of the Regional Director's Affidavit:

The Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Para 3(d) of the Rejoinder:

The Petitioners state that the Transferee Company shall, if applicable, pay the applicable stamp duty on transfer of the immovable properties from the Transferor Companies to it.

Para 2(e) of the Regional Director's Affidavit:

The Petitioners to file an affidavit to the extent that the scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Para 3(e) of the Rejoinder:

The Petitioners states that the Scheme enclosed to the Company Application and Company Petition are one and the same and that there is no discrepancy or no change is made.

Para 2(f) of the Regional Director's Affidavit:

The Transferor Company, Capex Management Consultancy Private Limited filed Form MGT-7 in respect of Annual Return for the year ended 31/03/2022 with list of Shareholders as at 31/03/2023 instead of correct list of Shareholders as on 31/03/2022. The Petitioner Company should file revise form MGT-7 with correct list of shareholders as at 31/03/2022 before merger.

Para 3(f) of the Rejoinder:

The Transferor Company No. 3, Capex Management Consultancy Private Limited while filing Form MGT 7A for the FY 2021-22 had inadvertently attached a copy of list of shareholders as on 31/03/2023 instead of 31/03/2022.

In accordance with the directions of Hon'ble Regional Director, Eastern Region, Capex Management Consultancy Private Limited (Transferor Company No. 3) has re-filed the Form MGT 7A with correct list of Shareholders as on 31/03/2022 before Registrar of Companies, Kolkata vide SRN F54581491 dated 26th December, 2022. A copy of acknowledgement of the said e-Form is enclosed and marked as “ANNEXURE- B” to the rejoinder.

6. Heard submissions made by the Ld. Counsel appearing for the Petitioner, Authorized Person from Regional Director, MCA. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

(a) The Scheme of Amalgamation mentioned in paragraph 1 of the Petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal with the appointed date as 01st April, 2021 (“Appointed Date”) and shall be binding on Aryadeep Trexim Private Limited, being the Applicant No.1 above named ("Transferor Company" or “Applicant No. 1”), Banister Marketing Private Limited, being the Applicant No.2 above named ("Transferor Company" or “Applicant No. 2”), Capex Management Consultancy Private Limited, being the Applicant No.3 above named ("Transferor Company" or “Applicant No. 3”), Goldy Devcon Private Limited being the Applicant No.4 above named (“Transferor Company" or “Applicant No. 4”), Kulaga Marketing Private Limited being the Applicant No.5 above named (“Transferor Company" or “Applicant No. 5”), Marwah Properties Private Limited being the Applicant No.6 above named (“Transferor Company" or “Applicant No. 6”), MJB Tea Processing Private Limited being the Applicant No.7 above named (“Transferor Company" or “Applicant No. 7”), Yellow Valley Buildcon Private Limited being the Applicant No.8 above named (“Transferor Company" or “Applicant No. 8”), with Libra Projects Private Limited, being the Applicant No. 9 above named (“Transferee Company" or “Applicant No. 9”) their respective shareholders and creditors and all concerned;

(b) all the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

(c) all the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

(d) the employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;

(e) all proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;

(f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

(g) Leave is granted to the Petitioner(s) to file the Schedule of Assets and Liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No. CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

(h) The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order (effective date) cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on all such certified copies being so delivered, the Transferor Companies shall be dissolved without winding up.

7. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, after verification, to the certified copy of the order.

8. Company Petition (CAA) No. 171/KB/2022 is disposed of accordingly.

9. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

