(2023) 02 NCLT CK 0002

In the National Company Law Tribunal

Case No : C.A. (CAA) /291/MB/2022

L&T Investment Management Limited Vs

Date of Decision : 03-02-2023

Acts Referred:

Companies Act, 2013 — Section 230, 230(1)(a), 230(1)(b), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 02 NCLT CK 0002

Hon'ble Judges : P. N. Deshmukh (Retd.), Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Devanshi Sethi, Tanaya Sethi

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

1. The Court convened by video - conference today.

2. The Learned Counsel for the Applicant Companies submits that the present scheme is a Scheme of Arrangement between L&T Investment Management Limited ("Transferor Company") and HSBC Asset Management (India) Private Limited ("Transferee Company") and their respective Shareholders ("Scheme") to provide for the amalgamation of the First Applicant Company into the Second Applicant Company.

3. The Learned Counsel for the Applicant Companies submits that the First Applicant Company was primarily engaged in the business of acting as an asset management company for mutual fund schemes. It is further submitted that the Second Applicant Company acts as an asset management company for the HSBC Mutual Fund and is engaged in the business of operating and administering the HSBC mutual fund schemes including acting as a manager, operator, administrators of the HSBC mutual fund, as applicable under the terms of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996.

4. The Learned Counsel for the Applicant Companies submits that the Board of

Directors of the First Applicant Company vide resolution dated 25th November 2022 and the Second Applicant Company vide resolution dated 25th November 2022, approved the Scheme. The Appointed Date of the Scheme means start of business hours on 25th November 2022.

5. The Learned Counsel for the Applicant Companies submits that following is the rationale of the Scheme:

i. the First Applicant Company is a wholly owned subsidiary of the Second Applicant Company. The Second Applicant Company along with its nominees holds the entire share capital of the First Applicant Company;

ii. with a view to maintain a simple corporate structure, enable direct control over the Undertaking (as defined in the Scheme) of the First Applicant Company and eliminate duplicative corporate procedures, the management of the First Applicant Company and the Second Applicant Company are desirous of amalgamating the companies, with effect from the Appointed Date, to reduce costs, and enable a focused management;

iii. the amalgamation of the First Applicant Company with the Second Applicant Company would have the following benefits:

a. pooling of resources of the entities to their common advantage, resulting in a more productive utilization of the resources, costs and operational efficiencies, which would be beneficial for all stakeholders; and

b. reduction in compliances and statutory filings with various government departments.

Therefore, with a view to effect such plan, the board of directors of the First Applicant Company and the Second Applicant Company proposes that the Undertaking of the First Applicant Company be transferred to and vested in the Second Applicant Company on a going concern basis pursuant to this Scheme under the provisions of Sections 230 to 232 read with the relevant provisions of the Companies Act, 2013, in such manner as provided for in this Scheme. Accordingly, this Scheme under Sections 230 to 232 and applicable provisions of the Companies Act, 2013, has been proposed to provide for the merger of the First Applicant Company into the Second Applicant Company. Upon the sanction of the Scheme by the Hon’ble Tribunal and the Scheme becoming effective on the Effective Date (as defined in the Scheme), the Undertaking of the First Applicant Company shall stand transferred to, and be vested in, the Second Applicant Company on and from the Appointed Date (as defined in the Scheme) for all intent and purposes.

6. The share capital structure of the First Applicant Company as on 25th November 2022, was as follows:

Particulars

Amount (in INR)

Authorized Share Capital

55,12,57,920 equity shares of INR 10 each

551,25,79,200

33,00,000 compulsory convertible preference shares of INR 100 each

33,00,00,000

2,20,00,000 redeemable non-convertible preference shares of INR 100 each

220,00,00,000

65,00,00,000 preference shares of INR 10 each

650,00,00,000

TOTAL

1454,25,79,200

Issued, subscribed and paid-up Share Capital

22,06,24,329 equity shares of INR 10 each, fully paid up

220,62,43,290

TOTAL

220,62,43,290

7. The share capital structure of the Second Applicant Company as on 25th November 2022, was as follows:

Particulars

Amount (in INR)

Authorized Share Capital

450,00,00,000 equity shares of INR 10 each

4500,00,00,000

80,00,000 cumulative redeemable preference shares of INR 10 each

8,00,00,000

TOTAL

4508,00,00,000

Issued, subscribed and paid-up Share Capital

34,44,15,000 equity shares of INR 10 each, fully paid up

344,41,50,000

TOTAL

344,41,50,000

8. Upon the coming into effect of the Scheme:

• all shares of Transferor Company held by the Transferee Company shall be deemed to have been cancelled without any further act or deed, and no shares of the Transferee Company shall be required to be issued in lieu thereof. The share certificates (if any) held by the Transferee Company representing the equity shares in the Transferor Company shall be deemed to be cancelled and not tradable from and after such cancellation; and

• the Transferor Company shall stand dissolved without winding-up, and the Board of the Transferor Company shall also, without any further act, instrument or deed, be and stand dissolved.

9. The Counsel for the Applicant Companies submits that:

• there are 7 (seven) Equity Shareholders in First Applicant Company and that they have procured the consent affidavits from all the Equity Shareholders of the First Applicant Company which are annexed as Annexure J1 to J7 to the Company Scheme Application; and

• there are 3 (three) Equity Shareholders in the Second Applicant Company and that they have procured the consent affidavits from all the Equity Shareholders of the Second Applicant Company which are annexed as Annexure M1 to M3 to the Company Scheme Application.

10. In view of the fact that all the Equity Shareholders of all the Applicant Companies have given their consent affidavits, the meetings of the Equity Shareholders of all the Applicant Companies are hereby dispensed with.

11. The Learned Counsel for the Applicant Companies submits that there are no Secured Creditors in the First Applicant Company and Second Applicant Company and therefore, the question of holding meetings of Secured Creditors for the First Applicant Company and Second Applicant Company does not arise.

12. The Learned Counsel for the Applicant Companies submits that there are 106 (one hundred and six) Unsecured Creditors in the First Applicant Company amounting to INR 18,11,86,375 (Rupees Eighteen Crores Eleven Lakh Eighty Six Thousand Three Hundred and Seventy Five only) and 84 (eighty four) Unsecured Creditors in the Second Applicant Company amounting to INR 49,26,47,472 (Rupees Forty Nine Crores Twenty Six Lakhs Forty Seven Thousand Four Hundred and Seventy Two only). The Learned Counsel for the Applicant Companies further submits that the present Scheme is a Scheme of Arrangement of the Applicant Companies and their respective Shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013 and not in accordance with the provisions

of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise and/ or arrangements with the creditors as no sacrifice is called for. Further the merger is wholly owned subsidiary with the holding Company. Therefore, the meeting of the Unsecured Creditors of the Applicant Companies are hereby dispensed with. However, the Applicant Companies are directed to issue notice to all their respective Unsecured Creditors, by Registered Post Acknowledgement Due, Courier or Hand Delivery or through Email (to those creditors whose email addresses are duly registered with the First Applicant Company for the purpose of receiving such notices by email), at their last known addresses as per the records of the First Applicant Company, as may be feasible.

13. The Applicant Companies are directed to serve notices of present Application along with its enclosures upon: (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made i.e., for the First Applicant Company (PAN:AABCC5819R), Income Tax Department, Deputy Commissioner of Income-tax-2(2)(1), 5th Floor, Aayakar Bhawan, M K Road, Mumbai – 400 021, and for the Second Applicant Company (PAN:AABCH0007N), Income Tax Department, Deputy Commissioner of Income-tax-1(1)(1), 5th Floor, Aayakar Bhawan, M K Road, Mumbai – 400 021; (ii) the Central Government through the office of the concerned Regional Director; (iii) concerned Registrar of Companies, (iv) the relevant Goods and Services Tax Department, (v) Securities and Exchange Board of India, with a direction that they may, if they so wish, submit their representations, if any, within a period of thirty days (30) from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies failing which, it shall be presumed that the authorities have no representations to make on the proposals.

14. The First Applicant Company is also directed to serve notice upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal to direct Official Liquidator to scrutinize the books of accounts of the First Applicant Company for the last 5 years and submit its report to the Tribunal. If no representation/response is received by the Tribunal from Official Liquidator, High Court, Bombay within a period of 30 days from the date of receipt of such notice, it will be presumed that he has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

15. Order accordingly.