(2024) 04 NCLT CK 0024

In the National Company Law Tribunal

Case No : C.P.(CAA)/10/MB-I/2024 c/w C.A.(CAA)/225/MB-I/2023

Luxury Agro Development Private Limited Vs

Date of Decision : 10-04-2024

Acts Referred:
Companies Act, 2013 — Section 230, 232, 232(3)(i)

Citation : (2024) 04 NCLT CK 0024

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah & Co,Tushar Wagh

Final Decision : Disposed Of

Judgement

V.G. Bisht, Member (Judicial)

1. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme, except otherwise stated hereunder.

2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of Luxury Agro-Development Private Limited (Transferor Company) with Nyati Retreat Private Limited (Transferee Company) and their respective shareholders and creditors.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 27th July, 2023.

4. The Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 225 of 2023 of the Tribunal and that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law

Tribunal, Mumbai Bench.

5. The Petitioner Company No. 1 is presently carrying on business of parks and resorts and that the Petitioner Company No. 2 is presently carrying on business of hotels and resorts.

6. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:

(a) The merger of Transferor Company with the Transferee Company will enable consolidation of business and assets and liabilities of both the companies. This amalgamation would enable Transferee Company to carry on and conduct its business more efficiently and advantageously with better economies of scale, more productive and optimum utilization of various resources, strengthen its financial position and ability to raise resources for conducting business, achieve synergies in business activities, further development and growth of the business and to reduce costs.

(b) The Scheme of Amalgamation of the companies would inter- alia have the following benefits:

(i) Garnering the benefits arising out of lower operating costs.

(ii) Pooling of the management, and administration to result in savings of costs.

(iii) Combined capital resources will result into increasing the leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes.

(iv) Eliminating duplication of work in areas like Accounts, Company Law and Tax Assessments, common administrative services and resulting in cost savings.

(v) Facilitating consolidation of operations and optimum utilization of assets.

(vi) Reflecting the consolidated net worth of the companies in one balance sheet.

(vii) Greater size, scale, integration, financial strength and flexibility would enhance the Transferee Company’s ability to leverage on its asset base, diverse range of products and services and vast pool of intellectual capital which would result in maximizing overall shareholder value.

(viii) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, and the elimination of duplication of work in various support functions as well as compliances with various statutory acts, rules and regulations.

(ix) The proposed Scheme of Amalgamation is in the interest of all the parties to this Scheme and their respective shareholders and creditors and will in the long term be in the interest and welfare of the employees and stakeholders.

7. The Regional Director has filed his Report dated 05.03.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that :

a. The Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable;

b. The Petitioner will comply with the requirements as to Appointed Date and clarified vide circular no. F.No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry;

c. The setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013;

d. The Scheme enclosed to Company Application and Company Petition, are one and same and there is no discrepancy / any change / changes are made;

e. The net worth of the Transferee Company would still be positive after the absorption of the Transferor Company;

f. The interest of creditors will be protected.

g. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

8. Mr. Tushar Wagh, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that the explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

9. The Official Liquidator has filed his Report dated 6th March, 2024 inter-alia making the following observations in paragraphs 5 and 6 which are reproduced hereunder:

a. The Petitioner Company shall pay the necessary stamp duty as per provisions of Section 232(3)(i) of the Companies Act, 2013;

b. The management of the Transferor/ Transferee Company is confident that going forward the business will grow, and profits will be generated. Further, it is to be noted that the net worth of the Transferee Company, even after setting off the negative net worth of the Transferor Company, would still be positive and that there will be no impact on the Transferee Company.

10. 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. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 10 of 2024 is made absolute in terms of clauses 27 (a) to (c) of the said Company Scheme Petition.

11. The First Petitioner Company be dissolved without winding up.

12. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to a physical copy within 30 days from the date of receipt of the Order from the Registry.

13. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

14. All authorities concerned to act on a copy of this Order along with the Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

15. The Appointed Date is 1st April, 2023.