**(2022) 08 NCLT CK 0010**

**In the National Company Law Tribunal**

**Case No :** CA (CAA) 152/MB-IV/2022

# Manohar Packagings Private Limited Vs

**Date of Decision :** 12-08-2022

**Acts Referred:**
Companies Act, 2013 — Section 230, 230(1)(b), 230(3), 230(5), 232
Companies (Compromises Arrangements and Amalgamations) Rules, 2016 — Rule 8

**Citation :** (2022) 08 NCLT CK 0010

**Hon'ble Judges :** Kishore Vemulapalli, Member (J);Manoj Kumar Dubey, Member (T)

**Bench :** Division Bench

**Advocate :** Ahmed Chunawala, Rajesh Shah

**Final Decision :** Disposed Of

## Judgement

Kishore Vemulapalli Member (Judicial)

1. The Bench is convened by Video Conference.

2. Learned Counsel for the Transferor Company ("Applicant Company") states that the present Scheme is a Scheme of Amalgamation ("Scheme") between Manohar Packagings Private Limited ("the Transferor Company") and Parksons Packaging Limited ("the Transferee Company") and their respective shareholders under sections 230 to 232 of the Companies Act, 2013 ('Scheme'). The Transferor Company is a wholly owned subsidiary of the Transferee Company.

3. Learned Counsel for the Applicant Company submits that the Applicant Company is engaged in the business of manufacture and supply of paper-based cartons and that the Transferee Company is engaged in the business of manufacturing and supply of paper based folding cartons and /or gable top cartons.

4. Learned Counsel for the Applicant Company submits that Parksons Packaging Limited, the Transferee Company is pending before National Company Law Tribunal, Ahmedabad Bench.

 

5. The Rationale and Purpose of the Scheme of Amalgamation:

"PPL and MPPL are engaged in a similar line of business. PPL, with the objective of expanding its business operations, acquired the entire business and operations of MPPL on November 26, 2021, through purchase of 100% of the equity shares of MPPL. Pursuant to this Scheme, PPL intends to consolidate the operations of MPPL, its wholly owned subsidiary, with itself by way of merger. This is in line with PPL's strategy of business expansion and inorganic growth.

The management of MPPL and PPL believe amalgamation of MPPL with PPL, inter alia, would have the following benefits:

i. consolidation of business activities into one single entity will lead to elimination of duplication in administrative costs and multiple record-keeping and increase operational and management efficiency and synergy resulting in cost savings and enable PPL to participate more profitably in an increasingly competitive market;

ii. more focus and concentrated efforts by management to grow the business with faster and effective decision making by eliminating unnecessary multiple and burdensome communication and coordination effort across different entities;

iii. the merger will provide an opportunity to leverage combined assets, capabilities, experience, and infrastructure of both entities and build a stronger sustainable business and enable optimal utilization of existing resources;

iv. integrate business functions and enable the management to pool human resources with diverse skills, talent, and experience of both the companies for common advantage and for further growth and diversification in the business;

v. simplification of corporate structure and reduction of legal and regulatory compliances relating to MPPL;

vi. create enhanced value for all stakeholders of the respective companies; and

vii. consolidation of business will result in expansion of operations and cost reduction and would enable PPL to self-finance for the above-referred benefits it is likely to receive as part of the merger of the MPPL with PPL.

6. The Authorized, Issued, Subscribed and Paid-up Share Capital of the First Applicant Company/Transferor Company No.1 as on 31st March 2022 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

3,00,000 Equity Shares of Rs. 10/-each, fully paid-up

30,00,000/-

Total

 

30,00,000/-

Issued,  Subscribed and Paid-up Share Capital

2,40,000 Equity  Shares of Rs. 10/- each, fully paid-up

24,00,000/-

Total

24,00,000/-

7. The Financial details/summary of the First Applicant Company/Transferor Company No.1 as on 31.03.2022 is as under:

Year

Net worth in Rs.

Total  Revenue in Rs.

Profit  /Loss in Rs.

2019-2020

43,04,68,503

128,38,53,197

125,46,35,140

2020-2021

43,18,82,645

132,80,02,840

131,28,41,728

2021-2022

55,28,83,527

190,84,56,872

176,18,42,450

8. Learned Counsel for the Applicant Company states that the Board of Directors of the Applicant Company in their meetings conducted on 10.05.2022 has approved the Scheme. The Appointed Date fixed under the Scheme is 01.04.2022.

9. The Learned Counsel for the Applicant company submits that in the First Applicant Company there are 7 (seven) Equity shareholders having value of Rs. 2,40,000/- have given their Consent Affidavits approving the Scheme affidavits holding 100% equity share capital in the Applicant Company. That the convening

 

and holding the meeting of the Equity Shareholders of the Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation between Manohar Packagings Private Limited and Parksons Packaging Limited and their respective shareholders is dispensed with in view of the consent affidavits given by the Seven Equity Shareholders of the Applicant Company, which are annexed as 'Exhibit H-1 to H-7' to the Company Scheme Application.

10. The Learned Counsel for the Applicant company submits that, that there 2 (Two) Secured Creditors having Term loan of Rs. 26,99,58,227/- (Rupees twenty-six crore ninety-nine lakhs fifty-eight thousand two hundred and twenty-seven only) and Cash Credit of Rs. 18,78,33,066/- (Rupees eighteen crores seventy-eight lakhs thirty-three thousand and sixty-six only) the value of such secured creditors constituting Rs. 45,77,91,293/- (Rupees Forty-Five Crores Seventy-Seven Lakhs Ninety-One Thousand Two Hundred and Ninety-Three Only) as on March 31, 2022. The Counsel for the Applicant Company submits that the Scheme does not envisage any compromise or arrangement with the Secured Creditors of the Applicant Company and hence they will in no way be affected by the Scheme of Amalgamation. However, this bench hereby directs the Applicant Company to issue notice by Registered Post-AD/Speed Post/Hand Delivery and by E-mail (whose mail-Ids are available with the Applicant Company) to its Secured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

11. The Learned Counsel for the Applicant Company submits that there are 163 (one-hundred sixty-three) Unsecured Creditors having value of Rs. 18,36,82,422/- (Rupees eighteen crore thirty-six lakh eighty-two thousand four hundred and twenty-two only). The Counsel for the Applicant Company further submits that the present Scheme is an amalgamation between Transferor Companies, Transferee Company and their respective Shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013. Thus, there is no compromise and/or arrangement with any of the Unsecured Creditors of the Applicant Company. Further, no sacrifice is called for as all the Unsecured Creditors of the Applicant Company would be paid in ordinary course of business. Therefore, no meeting of Unsecured Creditor of the Applicant Company is required to be convened. This Bench hereby directs the Applicant Company to issue notice enclosing copy of Scheme to all the Unsecured Creditors named in the Scheme, by Registered Post-AD/Speed Post and by E-mail (whose mail-Ids are available with the Applicant Company) and that they may submit their objections, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

12. The Learned Counsel for the Applicant company shall submit details of Corporate Guarantee, Performance Guarantee, Bank Guarantee and Contingent

Liabilities at the time of submitting the Company Petition; if any.

13. The Learned Counsel for the Applicant company shall submit list of pending IBC cases, along with all other litigation pending against the Applicant company having material impact on the proposed Scheme at the time of submitting the Company Petition; if any.

14. The Learned Counsel for the Applicant Company shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details at the time of submitting the Company Petition; if any.

15. The Applicant company is directed to serve notices by Registered - AD/ Speed Post & Hand Delivery and also by E-mail (whose mail-Ids are available with the Applicant company) along with copy of Scheme upon:

(i) Central Government, through Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai

(ii) The Income Tax Authorities;

(iii) Registrar of Companies, Mumbai;

(iv) Goods and Service Tax Department;

and to any other applicable Regulatory Authority with a direction that they may submit their representations, if any, if no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

16. The Applicant company to serve notice by Registered -AD/Speed Post and Hand Delivery upon the Official Liquidator, High Court, Bombay at Mumbai pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing Mr. Bhavesh Ved, Chartered Accountants B.A VED & COMPANY, having their office at Shop No.3, Balaji Arcade, Opp Central Bank of India, S.V. Road, Kandivali (W), Mumbai-400067, Maharashtra, Email: vedbhavesh@gmail.com to assist the Official Liquidator to scrutinize books of Accounts of the Applicant company for the last five years on a remuneration of Rs. 2,00,000/- If no response is received by the concerned Tribunal from Official Liquidator within 30 days it may be presumed that Official Liquidator, High Court, Bombay at Mumbai has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Applicant company to file an Affidavit of Service and Compliance Report within 10 working days after serving the notice to all the Regulatory Authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

 