(2021) 09 NCLT CK 0048

In the National Company Law Tribunal

Case No : CP (CAA) 35 OF 2021 Connected With CA (CAA) 1056 OF 2020

Mapro Foods Private Limited Vs

Date of Decision : 23-09-2021

Acts Referred:
Companies Act, 2013 — Section 13, 14, 61, 64, 230, 230(5), 232, 232(6)

Citation : (2021) 09 NCLT CK 0048

Hon'ble Judges : Ashok Kumar Borah, Member (J);Shyam Babu Gautam, Member (J)

Bench : Division Bench

Advocate : Hemant Sethi, Vidisha Poonja, Rupa Sutar

Judgement

Shyam Babu Gautam, Member (Technical)

1. The Court is convened by videoconference today.

2. Heard Learned Counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the petition and 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 ("Act") and in the matter of Scheme of Arrangement between Mapro Foods Private Limited ('First Petitioner Company') and Vora Products Private Limited ('Second Petitioner Company') and their respective shareholders ('Scheme').

4. The Learned Counsel for the Petitioner Companies submits that the First Petitioner Company is engaged in the business of manufacturing, processing, distribution of all types of food and food products, beverages and manufacturing, processing, distribution, import and export of fruit preservers, jam, syrup, sweets, marmalade, jelly, etc..

Second Petitioner Company is primarily engaged in the business of manufacturing, processing, preserving, refining, canning, bottling, packing, re-packing, dealing, distribution, import, and selling of food and food products and in the activity of dairy farming, agri-culture, horticulture and floriculture.

5. The rationale for the Scheme of Arrangement is set out below:

The Rationale behind this Scheme of Arrangement (Demerger) is to divest the Demerged Undertaking of the Demerged Company which mainly comprises of non-strategic investments in an array of financial securities like mutual funds, shares, bonds, fixed income instruments, etc. into the Resulting Company since it is envisaged that the following benefits would, inter alia, accrue to the Demerged Company and the Resulting Company:

(i) To enable the Demerged Company to focus on its core business; namely that of manufacturing of all types of food and fruit products;

(ii) To enable the Resulting Company to have a more focused approach on the investment activities with a view to enhancing the returns for the shareholders;

(iii) By demerger of Demerged Undertaking into the Resulting Company, the financial resources will be conveniently merged and pooled with the resources of the Resulting Company, leading to better deployment of resources and more efficient utilization of capital by the Resulting Company.

(iv) Additionally, the demerger of the Demerged Undertaking from the Demerged Company to the Resulting Company would lead to significant benefits for the respective businesses of the Demerged Company and Resulting Company, including:

a. Better operational management and focus on their respective business;

b. Improvement in shareholder value in both the companies and

c. Administrative convenience.

6. Both the Petitioner Companies have approved the Scheme by passing their respective Board Resolutions dated July 18, 2020 and have approached the Tribunal for sanction of the Scheme.

7. Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the order dated October 6, 2020 passed by this Tribunal in CA(CAA)/1056/2020MB

8. The Regional Director has filed its report dated July 5, 2021 ("Report") praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in paragraphs IV (a) to (g). In para IV of the Report, Regional Director has stated:

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) The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).

c) The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.

d) As per Definition of the Scheme,

"Appointed Date" for the Demerger means 1st day of April 2020 or such other date(s) as the Board of Directors of the Demerged Company and the Resulting Company may fix or such other date(s) as the NCLT, Mumbai Bench or any other Competent Authority may approve / fix.

"Effective Date" means the date on which the certified copies of the Order(s) or last of the Orders, as the case may be, of the NCLT(s) sanctioning the Scheme, are filed with the Registrar of Companies. Any references in the Scheme to the words "date of coming into effect of the Scheme" or "upon the Scheme becoming effective" or "Scheme coming into effect" 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.

e) As per Clause 12 of the Scheme,

Upon coming into effect of Part B of this Scheme, the Authorized Share Capital of the Resulting Company shall stand increased from the present authorized share capital of Rs. 10,00,000/- (comprising of 1,00,000 Equity Shares of Rs.10 each) to Rs. 28,00,000/- (comprising of 2,80,000 Equity Shares of Rs. 10 each), without any further act, deed or procedure, formalities, but after payment of any applicable stamp duty and registration fees. Pursuant to this Scheme, the Resulting Company shall however upload all necessary forms with the Registrar of Companies, Mumbai for the said increase in authorized share capital of the Resulting Company.

Petitioner Companies shall undertake to comply provisions of Section 13, 14 Section 61, Section 64 or any other applicable provisions of the Companies Act, 2013 read with applicable Rules.

f) As per Clause 14 of the Scheme,

Upon the coming into effect of the Scheme, the difference being excess of book value of assets over book value of liabilities recorded by the Resulting Company over the amount credited as share capital, after adjusting will be credited to Capital Reserve Account or debited to Goodwill Account as the case may be.

In this regards, Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account arising out of demerger and deficits shall be debited to Goodwill Account.

Further Petitioner Companies have to undertake that reserves shall not be availble for distribution of dividend.

g) ROC, Pune Report dated 05.02.2021 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.

Further mentioned that :-

1. As per records available Petitioner companies neither vanishing or shell companies.

Hon'ble Tribunal may consider the observations pointed out by ROC, Mumbai in their report and decide the matter on merits.

9. In response to the above observations of the Regional Director, the Petitioner Companies have filed an affidavit in rejoinder dated July 9, 2021 and have clarified as follows:

a) As regards the observation made in Paragraph IV (a) of the said Report, the Petitioner Companies undertake that in addition to 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 all applicable Accounting Standards such as AS-5 (IND AS-8), to the extent applicable.

b) As regards to the observation made in Paragraph IV (b) of this Report, the Petitioner Companies confirm that as per the provisions of section 230(5) of the Companies Act, 2013, the Petitioner Companies have served notices to all the concerned authorities; Regional Director, Registrar of Companies and the Income Tax Department and the observations made by the concerned authorities have been duly responded and dealt with by the Petitioner Companies, wherever required.

c) As regards the observation made in Paragraph IV (c) of this Report, the Petitioner Companies undertake and confirm that Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.

d) As regards the observation made in Paragraph IV (d) of the said Report, the Petitioner Companies seek to clarify as under:

i. Clause 1(b) of the Scheme provides that the Appointed Date means 1st day of April 2020 or such other date(s) as the Board of Directors of the Demerged Company and the Resulting

Company may fix or such other date(s) as the NCLT, Mumbai Bench or any other Competent Authority may approve / fix, which is in compliance with the provisions of Section 232(6) of the Companies Act,2013 and the Scheme shall take into effect from that date;

ii. Clause 1(l) of the Scheme provides that the Effective Date means the date on which the certified copies of the Order(s) or last of the Orders, as the case may be, of the NCLT(s) sanctioning the Scheme, are filed with the Registrar of Companies. Any references in the Scheme to the words "date of coming into effect of the Scheme" or "upon the Scheme becoming effective" or "Scheme coming into effect" shall mean the "Effective Date".

iii. Clause 1(c) read with Clause 4 of the Scheme provides that the transfer and vesting shall take place with effect from the Appointed Date and upon this Scheme coming into effect.

iv. The Petitioner Companies undertake that they have duly complied with the provisions and requirements set out vide circular no. F. No 7/12/2019/CL-I dated 21-08-2019 issued by

Basis the above, the Petitioner Companies confirm that the observations made in Para IV(d) of the Report have been duly complied by it.

a) As regards the observation made in Paragraph IV (e) of this Report, the Resulting Company hereby undertakes to upload all necessary forms with the Registrar of Companies, Mumbai for the said increase in authorized share capital of the Resulting Company and the Petitioner Companies hereby undertake to comply provisions of Section 13, 14 Section 61, Section 64 or any other applicable provisions of the Companies Act, 2013 read with applicable Rules.

b) As regards the observation made in Paragraph IV (f) of this Report, the Petitioner Companies seek to clarify that Clause 14 of the Scheme provides that the difference being excess of book value of assets over book value of liabilities recorded by the Resulting Company over the amount credited as share capital, after adjusting for Para 14.2.3 of the Scheme will be credited to Capital Reserve Account or debited to Goodwill Account as the case may be.

In this regard, the Petitioner Companies hereby undertake that the surplus shall be credited to Capital Reserve Account arising out of demerger and deficits shall be debited to Goodwill Account and also that such Capital Reserves shall not be available for distribution of dividend. As regards the observation made in Paragraph IV (f) of this Report, the Petitioner Companies seek to clarify that Clause 14 of the Scheme provides that the difference being excess of book value of assets over book value of liabilities recorded by the Resulting Company over the amount credited as share capital, after adjusting for Para 14.2.3 of the Scheme will be credited to Capital Reserve Account or debited to Goodwill Account as the case may be.

In this regard, the Petitioner Companies hereby undertake that the surplus shall be credited to Capital Reserve Account arising out of demerger and deficits shall be debited to Goodwill Account and also that such Capital Reserves shall not be available for distribution of dividend.

e) As regards the observation made in Paragraph IV (g) of this Report, the Petitioner Companies submit that the observation is generic and accords no further explanation.

5. The observations made by the Regional Director have been explained in Para 8 above. The clarifications and undertakings given by the Petitioner Companies have been explained in Para 9 above. The clarifications and undertaking given by the Petitioner Companies are hereby accepted by the Tribunal.

6. In response to the Affidavit in Rejoinder dated 9 July 2021 the Regional Director has filed its Supplementary Report dated 20 July 2021 stating replies of the Petitioner Companies in so far as iv (a) (b), (c), (e), (f), are satisfactory and the reply of the Petitioner Companies in so far as iv(d) is concerned may be decided on merits.

7. Since all the requisite statutory compliances have been fulfilled, CP (CAA) 35 of 2021 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.

8. The Scheme is hereby sanctioned with the Appointed Date of 1st April, 2020.

9. 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 along with e-form INC28 within 30 days from the date of receipt of the certified copy of Order by the Petitioner Companies. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.

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

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

12. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.

13. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

14. Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.