(2022) 10 NCLT CK 0028

In the National Company Law Tribunal

Case No : CA (CAA)/235/MB-IV/2021

Mapro Ventures Limited Vs

Date of Decision : 18-10-2022

Acts Referred:

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

Citation : (2022) 10 NCLT CK 0028

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

Bench : Division Bench

Advocate : Ashish O. Lalpuria, Kamal Lahoty

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. The Court is convened through video conferencing today.

2. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of MAPRO VENTURES LIMITED, the Transferor Company with MAPRO GASES LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 30th September, 2021 for the Transferor Company and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2021.

4. The Transferor Company is engaged in the business of establishing business facility centres, franchisee of branded products, commodities, dry cleaning services.

5. The Transferee Company is engaged in the Business of manufacturing, buying,

selling, importing, exporting, dealing, distribution of gases, oxygen, acetylene, argon, nitrogen, carbon dioxide, nitrous oxide, freon, helium, in gas and in liquid form, electrodes, wire, rods, welding fluxes, welding materials and allied accessories.

6. The Rationale for the Scheme of Amalgamation are as under:

(i) Both the Transferor and the Transferee Company i.e. MAPRO VENTURES LIMITED and MAPRO GASES LIMITED are closely held and are owned, managed and controlled by the same family i.e. majority of the Directors and Promoters belong to the same family

(ii) The Transferor Company is engaged in the business of providing dry cleaning and laundry services, import, export, buy, sell, trade, distribute, supply materials, gases. The Transferee Company is engaged in the business of providing industrial and commercial gases.

(iii) Combining business of both the entities would give a leverage to execute the business through effective utilization of the resources of both the Companies and would result in reduction of the aggregate /overall statutory and regulatory compliance cost and avail the benefit of synergy.

(iv) Combined business of both the entities would result in reduction of administrative, operating and marketing costs.

(v) The amalgamation of the Transferor Company into the Transferee Company shall facilitate consolidation of both the undertakings enabling effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of companies under the same Management and thus lead to reduction in administration efforts.

(vi) The proposed amalgamation will provide greater integration and flexibility to the Transferee Company and strengthen its position in the industry, in terms of the asset base, revenues, product and service range.

7. The Learned Authorised Representative submits that the Transferee Company towards the consideration for the Scheme shall issue 3.50 (Three Point Five Zero) Equity Shares of Rs.10/- (Rupees Ten only) for every 1 (One) Equity Shares of Rs.10/- (Rupee Ten only) each of Transferor Company held by such equity shareholders of the Transferor Company or their respective heirs, executors or, as the case may be, successors on the Record Date.

8. The authorized Share Capital of the Transferor Company as on 1st March 2022 is Rs. 2,50,00,000 (25,00,000 Equity shares of Rs. 10/- each) and Issued, Subscribed and Paid-up Rs. 2,35,00,000 (23,50,000 Equity shares of Rs. 10/- each fully paid-up).

9. The authorized Share Capital of the Transferee Company is Rs. 5,00,00,000 (50,00,000 Equity shares of Rs. 10/- each) and Issued, Subscribed and Paid-up

Rs. 5,00,00,000 (50,00,000 Equity shares of Rs. 10/- each fully paid-up).

10. The financial details/summary of the Transferor Company as on 31.03.2021 is as under:

Year

Net worth in Rs.

Total Revenue

Profit /(Loss)

in Rs.

in Rs.

2019-2020

(2,79,14,695)

1,06,17,184

(60,78,709)

2020-2021

(2,16,70,182)

2,84,17,349

(45,48,977)

The financial details/summary of the Second Applicant Company/Transferee Company as on 31.03.2021 is as under:

Year

Net worth in

Total Revenue

Profit /(Loss) in Rs.

Rs.

in Rs.

2019-2020

1,15,15,094

5,66,614

(3,29,514)

2020-2021

1,18,44,608

5,20,468

(9,707)

11. The Transferor Company has 13 (thirteen) equity shareholders out of which 98.38% of the total value of the shareholders have given their consents to the scheme by way of Consent Affidavits. The Consent Affidavits of the equity shareholders are placed at Page 268-288 of the Company Application. In view of this, the meeting of the equity shareholders of the Transferor Company is dispensed with.

12. The Transferee Company has 14 (Fourteen) equity shareholders out of which 98.10% of the total value of the shareholders have given their consents to the scheme by way of Consent Affidavits. The Consent Affidavits of the equity shareholders are placed at page 289-311 of the Application. In view of this, the meeting of the equity shareholders of the Transferee Company is dispensed with.

13. The Transferor Company has 1 (One) Secured Creditor as on 1st March, 2022 amounting to Rs.1,76,145/-, the details of which has been placed at pg. 12 of the Additional Affidavit. Since the present Scheme does not involve an arrangement with creditors and there will be no diminution of the liability of the Transferee Company towards the said secured creditors, meeting of the secured Creditors of the Transferor Company be dispensed with subject to obtaining consent of the said secured creditor before the filing of the Petition.

14. The Learned Authorised Representative submits that there are no Secured Creditors in the Transferee Company.

15. The Transferor Company has 15 (Fifteen) unsecured Creditors as on 1st March, 2022 amounting to Rs. 4,02,33,077.72/-, the details of the which has been placed at pg. 13 of the Additional Affidavit. Since the present Scheme does not involve an arrangement with creditors and there will be no diminution of the liability towards the said unsecured creditors, meeting of the unsecured Creditors of the Transferor Company shall be dispensed with subject to obtaining consent from 90% in value of Unsecured Creditors before the filing of the Petition.

16. The Transferee Company has 5 (Five) unsecured Creditors as on 1st March, 2022 amounting to Rs. 6,72,916/-, the details of which has been placed at pg. 22 of the Additional Affidavit. Since the present Scheme does not involve an arrangement with creditors and there will be no diminution of the liability towards the said unsecured creditors, meeting of the unsecured Creditors of the Transferee Company shall be dispensed with subject to obtaining consent from 90% in value of Unsecured Creditors before the filing of the Petition.

17. The Applicant Companies are directed to serve Notice by Registered Post-AD/ Speed Post/ Hand Delivery and Email upon-

1) The Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai

Maharashtra

2) Registrar of Companies, Mumbai,

3) the concerned GST Authorities and

4) The Ministry of Corporate Affairs

pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from these 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.

18. The Applicant Companies to serve the notice of the present Application complete with enclosures on the following Income Tax Authorities by Registered Post-AD/Speed Post/ Hand Delivery and email within whose jurisdiction the respective Applicant Companies are assessed to tax clearly indicating PAN of the concerned Company, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:

Name of Company

PAN

Income Tax Jurisdiction

MAPRO VENTURES

AAGCM9365F

Circle 3(2)(1), Mumbai

LIMITED

MAPRO GASES

AAGCM9364E

Circle 3(2)(1), Mumbai

LIMITED

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.

19. The Transferor Company is also directed to serve intimations of the Scheme by Registered Post-AD/Speed Post and Hand Delivery and Email upon Official Liquidator, 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 is appointing M/s. V.G. Naikwadi and Company, Chartered Accountants, having address at 313, BR. Nath Pai Marg, Latif Naik House, 3rd Floor, Room No. 51, Opposite Dockyard Road Station, Next to Anam Apartments, Mazgaon, Mumbai-400010, having Contact No. 9371009341 and Email- vilas@vgnmail.co.in to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company for the last 5 years and submit its representation/ report to the Tribunal. The aforesaid Companies to pay fees of Rs. 2,00,000/- for this purpose. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Applicant Companies are directed to submit a list of directors of their respective companies at the time of filing the Company Petition.

21. The Applicant Companies are directed to submit details of license obtained or required to be obtained under any law for the time being in force, if any, relating to the business activity of both the companies, from any authority and also issue due notices of the scheme to those Regulatory Authorities at the time of filing the Company Petition.

22. The Applicant Companies shall submit details of Assets, Liabilities, Net Worth, Income, Expenditure and Profit/Loss of the Transferor Company before the amalgamation as well as the effect of the scheme on both the Companies after the scheme comes into effect at the time of filing the Company Petition.

23. The Applicant Companies shall submit details of Corporate Guarantee, Performance Guarantee, Bank Guarantee executed by them, if any, and the same shall be substantiated with documents dealing with it at the time of filing the Company Petition.

24. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any at the time of filing the Company Petition.

25. The Applicant Companies shall submit list of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme at the time of filing the Company Petition.

26. The Applicant Companies to file an Affidavit of Service and Compliance within 10 working days after serving to 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.

27. The Appointed Date is 1st April, 2021.