(2020) 12 NCLT CK 0132

In the National Company Law Tribunal

Case No : Company Petition No. (CAA) 1036/MB-I Of 2020, Company Application No. (CAA) 3900/MB-I Of 2019

Marigold Premises Private Limited And Ors. Vs

Date of Decision : 15-12-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232, 232(6)

Citation : (2020) 12 NCLT CK 0132

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi, Rupa Sutar

Final Decision : Allowed

Judgement

Sr.

No.

Para

(IV)","RD Report / Observation Dated

4th December, 2020",Response of the Petitioner Companies.

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.;","In so far as observations made in paragraph

IV (a) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake that they will comply with AS 14 (Ind AS 103) and 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),"As per Definition of the Scheme, Appointed Date"" for the purpose of this scheme and for the Income Tax Act, 1961, the â??Appointed Dateâ?? means open of business hours on 1st April, 2020, or such other date as National Company Law Tribunal may direct and fix

Effective Date"" means the last of the dates on which the certified or authenticated copies of the order sanctioning this Scheme, passed by the National Company Law Tribunal are filed with the Registrar of Companies, Pune by the Transferor Company, Transferee Company No.1,2, and 3 who are parties to this Scheme.

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.","In so far as observations made in paragraph

IV (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that the Appointed Date would be 1st of April, 2020 as mentioned in the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies undertakes to comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs

c),"ROC, Pune Report dated 28.10.2020 has inter-alia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection, no complaint are pending.

Further mentioned that:-

1. As per the consideration clause of the scheme, redeemable preference shares are given with respect to the equity shares of the company getting demerged which may effect the right of the shareholders of the Transferor Company. In this regards, the applicant have submitted that the pre and post demerger shareholding of the demerger company is not getting changed and hence there is no

reduction of share capital. Further, shareholding pattern of all companies (Companies getting demerged and transferor companies) have identical shareholding pattern which will not be detrimental for the right of shareholders (100%) of the applicant companies hence, matter may be decide on its merit.

In this regards, the Petitioner Companies has to clarify the same.","In so far as observations made in paragraph IV (c) of the Report of ROC Pune is concerned, the Petitioner Companies has explained the same to the ROC that in view of the identical shareholding in the Transferor and Transferee Companies, issue and allotment of Preference Shares to the shareholder of transferee Companies as part of the scheme of arrangement will not impact the rights of any of the Shareholder of the Transferor Company and there is no reduction of capital of any of the petitioner companies.

(d),"The petitioner company is directed to place complete list of assets giving details of value of each item of assets to be demerged for all the three demerged undertaking proposed.","In so far as observations made in paragraph IV(d) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that list of assets and liabilities (with complete details and respective valuation) to be demerged is submitted with the Office of Regional Director, Mumbai vide letter dated 8th October 2020 submitted on 9th October, 2020, and is hereby placed on record of this Tribunal:

(Amount in INR)

Particulars Maintenance

Business

Undertaking

Demerged to

Second

Petitioner

Company

I. Liabilities

(1) Non -

current

Liabilities:

(a) Other Long-

Term Liabilities","Nil

Nil",

(2) Current

Liabilities: (a)

Trade Payables

(b) Other

Current

Liabilities","1,21,766

1,33,02,100",

Total

Liabilities","1,34,23,866",

II. Assets,,

(1) Non â?

current Assets:

(a) Non â?

current

Investments

(b) Long Term

Loans &

Advances","Nil

71,03,990",

(2) Current

Assets:

(a) Inventory

(b) Trade

Receivables

(c) Cash &

Cash

Equivalents

(d) ShortTerm

Loans &

Advances

(e) Other

Current Assets","Nil

1,48,95,948

7,95,420

5,67,963

12,73,742",

Total Assets,"2,46,37,063",

(Amount in INR),,

Particulars,"Infrastructure

Business

Undertaking

demerged to Third

Petitioner

Company",

I. Liabilities,,

(1) Non -

current

Liabilities:

(a)Long Term

Borrowings

(b) Other Long-

Term Liabilities","1,25,63,505

2,40,000",

(2) Current

Liabilities:

(a) Trade

Payables

(b) Other

Current

Liabilities","7,52,563

30,90,630",

Total

Liabilities","1,66,46,698",

II. Assets,,

(1) Non â?

current Assets:

(a)Fixed Assets

â?" Tangible

Assets

(b) Long Term

Loans &

Advances","14,87,35,383

80,000",

(2) Current

Assets:

(a) Inventory

(b) Trade

Receivables

(c) Cash &

Cash

Equivalents

(d) ShortTerm

Loans &

Advances

(e)Other","51,39,532

1,35,64,847

52,53,043

8,80,557",

Current Assets,"30,16,837",

Total Assets,"17,66,70,199",

Amount in INR),,

Particulars,"Construction and

Real Estate

Development

Business

Undertaking

Transferred to

fourth Petitioner

Company",

I. Liabilities,,

(1) Non -

current

Liabilities:

(a) Other Long-

Term Liabilities","Nil

Nil",

(2) Current

Liabilities:

(a) Trade

Payables

(b) Other

current

Liabilities","Nil

2,13,91,618",

Total

Liabilities","2,13,91,618",

II. Assets,,

(1) Non â?

current Assets:

(a) Non â?

current

Investments

(b) Long Term

Loans &

Advances","Nil

Nil",

(2) Current

Assets:

(a) Inventory

(b) Trade

Receivables

(c) Cash &

Cash

Equivalents

(d) ShortTerm

Loans &

Advances","10,34,91,532

Nil

Nil

23,93,028",

Total Assets,"10,58,84,560",

(e),"Further there are inconsistent

statement in scheme as to issue of

equity shares to the members of the

Transferee Company at para 6.2,

15.2, 24.2 at three places for three

Companies.

However, this paraâ??s are incorrect

to the extent that there is no proposal

to issue equity shares but issue of

Preference shares only.

Petitioner Companies have to

undertake to clarify the same.","In so far as observations made in paragraph

IV (e) of the Report of Regional Director is

concerned, it is clarified that the word

â??equityâ?? in para 6.2, 15.2 and

24.2 was due to typographical error instead of Preference Shares.

The same therefore be read as Preference share.

Under the main clause 6.1, 15.1 and 24.1, the allotment of Preference Shares is mentioned. These clauses relate to the treatment of fraction shares, if any. In view of the shareholding pattern and proposed allotment, no fraction shares are expected to arise.