(2019) 07 NCLT CK 0014

In the National Company Law Tribunal

Case No : Company Petition No. 394/CAA Of 2019, Company Application No. 129/CAA Of 2018

Maxwell Structures And Pillars Private Limited And Another — APPELLANT

Vs

Begunia Projects Private Limited — RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Companies Act, 2013 — Section 210, 213, 214, 215, 216, 219, 220, 222, 223, 224, 230, 231, 232, 233

Citation : (2019) 07 NCLT CK 0014

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J

Bench : Single Bench

Advocate : Suvendra Kumar Panda, T. Sundarnathan

Final Decision : Disposed Of

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under consideration is the Joint Company Petition No. 394/CAA/2019 filed under Section 230 to 233 of the Companies Act, 2013. As per the Scheme of Amalgamation (in Short, 'Scheme'), M/s. Maxwell Structures and Pillars Private Limited (hereafter referred to as Transferor Company 1') and M/s. Satabdi Buildcon Private Limited (hereafter referred to as Transferor Company 2') are proposed to be merged, amalgamated and vested with M/s. Begunia Projects Private Limited (hereafter referred to as Transferee Company') as a going concern.

2. The Transferor Company-1 was incorporated under the Companies Act, 1956 on 02.11.2006, having its Registered Office at Panda Bhavan, Pullakkunath, Chungam, Kalladikode, Palghat -678596, in the State of Kerala. The Transferee Company was incorporated under the Companies Act, 1956 on 06.06.2006, having its Registered Office at Mariyamman Nagar, Kattor, Chennai - 600062, in the State of Tamil Nadu. The registered Office of the Transferor Company-2 is situated in the State of Odisha, outside the jurisdiction of this Tribunal.

3. The main objects of the Transferor Company 1 are to carry on the business of Builders, Contractors, Structural Engineering Service Provider and Investing Activities, etc. The details of the main objects are set out in the Memorandum of Association of the Transferor Company 1. The main objects of the Transferee Company are to carry on the business of Builders, Contractors, Project Management Consultancy, Dealing in Real Estate property, Land Development, Agricultural operation and Investing Activities, etc. The details of the main objects are set out in the Memorandum of Association of the Transferee Company. The Board of Directors of the Transferor Company-1 and Transferee Company vide their Resolution(s) dated 04.12.2017 and 07.12.2018 respectively, have approved the present Scheme of Amalgamation. The other necessary requirements have also been fulfilled as per the Order dated 12.07.2018 passed by this Bench in CA/129/CAA/2018.

4. The Counsel appearing for the Petitioner Companies has submitted that the proposed Scheme of Amalgamation will reap the benefits of the economy of scale after greater leverage of funds. He further submitted that the said Scheme will enable the said Companies to pool their resources to their advantages also more over the said scheme has been proposed inter alia, to consolidate the group structure and provide business efficiency to continue their management and marketing strength, to streamline administration, to build a wider capital and financial base and to promote and secure the overall growth and economics of all the Companies concerned. He has further submitted that no proceedings are pending under Sections 210, 213 to 216, 219, 220, 222 to 225 the Companies Act, 2013 against any of the Petitioner Companies.

5. The Regional Director, Southern Region (In short, 'RD') in his Affidavit dated 05.02.2019 submitted that Clause 11, Part-II of the Scheme provides for the protection of the interest of the employees of the Transferor Companies. It has further been submitted that as per the report of the RoC, Kerala and the RoC, Chennai, the Transferor Company-1 and Transferee Company are regular in filing their statutory returns. He has further submitted that no complaint/inspection/ investigation or prosecution is pending against the Petitioner Companies.

6. The RD has also observed that Clause 15(vi)(a) of Part II of the Scheme has stated that the authorised capital of the Transferor Companies will be merged with the authorised capital of the Transferee Company. Therefore, the Transferee Company may be directed to file the amended MoA and AoA with the RoC, Chennai for records, and pay the fees, if any, for the enhanced authorised capital subsequent to the amalgamation after setting off the fees paid by the Transferor Companies.

7. In relation to the observations made by the RD in his report, the authorised representative of the Transferee Company has filed an Undertaking stating therein that the Transferee Company undertakes to pay the requisite statutory fee payable upon increase of the authorised share capital of the Transferee Company as per the applicable legal provisions. Therefore, the Transferee

Company shall amend the MoA and AoA and file the same with the concerned RoC, and shall pay fee as may be required.

8. The Official Liquidator (In short, 'OL') failed to file the report within the stipulated time and, therefore, it is presumed that he may not have any objection/representation to make. The OL has not raised any objection.

9. As mentioned in Clause 15 of the Scheme, it appears that the Accounting Treatment is in conformity with the Accounting Standards. The Appointed date of the said Scheme is 01.04.2017.

10. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petitions are allowed and the Scheme of Amalgamation annexed with the Petition(s) is hereby sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Petitioner Companies.

11. While approving the Scheme as above, It is farther clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

12. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

13. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.

14. The Transferor Company-1 shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.

15. Upon receiving the certified copy of this Order, the RoC concerned is directed to place all documents relating to the Transferor Company-1 with that of the Transferee Company and the files relating to the Transferor Company-1 shall be consolidated with the files and records of the Transferee Company.

16. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

17. Accordingly, the Scheme stands sanctioned and CP/394/CAA/2019 stand disposed of.

