(2023) 06 NCLT CK 0049

In the National Company Law Tribunal

Case No : CP (CAA) No.21/Chd/HP/2022

Maya Fincap Private Limited Vs

Date of Decision : 15-06-2023

Acts Referred:

Companies Act, 2013 — Section 133, 184, 185, 189, 230, 232, 232(3)(i)
Companies Act, 1956 — Section 295, 297, 299, 301
Income Tax Act, 1961 — Section 143(1)(a), 143(3), 170(2A)

Citation : (2023) 06 NCLT CK 0049

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Ashutosh Gupta

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint Second Motion Application filed by Petitioner Companies namely; Maya Fincap Private Limited (Petitioner Company No.1/Transferor Company No.1), with Aleo Manali Hydropower Private Limited (Petitioner Company No.13/ Transferee Company) under Section 230-232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement between the Petitioner Companies.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Arrangement amongst the respective companies. The said Scheme of Arrangement is attached as Annexure– 1 of the petition.

3. The First Motion application was filed before this Tribunal by Company Application No. CA (CAA) No. 47/Chd/HP/2021 which was disposed of on 03.02.2022 wherein the meetings of Equity Shareholders, Secured and Unsecured Creditors of both the applicant companies were dispensed with for the reasons recorded in the aforementioned order. In the order dated 03.02.2022, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors

of the Applicant companies were dispensed with for the reasons mentioned in the aforesaid order.

4. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme of Arrangement had been discussed in detail in the order dated 03.02.2022.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 25.05.2022 and the same were complied with by the Petitioner Companies. The Petitioner Company has filed affidavit of service by Diary No.00572/3 dated 18.10.2022. The notice of hearing was published in newspapers namely, "Business Standard" (English Edition) and "Business Standard" (Hindi Edition) on 14.07.2022. The original copies of the newspapers are attached as Annexure- A to the aforesaid respective affidavits. It is also stated in the aforesaid affidavits that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; New Delhi (2) Concerned Registrar of Companies (3) Official Liquidator (attached to Punjab and Haryana High Court) (4) Jurisdictional Income Tax Authorities through the Nodal officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by way of speed post. Original speed post receipts along with tracking report are attached as Annexure – B of the aforesaid affidavits.

6. It is deposed by authorized signatories of the Petitioner Companies that the Petitioner Companies have not received any complaint/objection against the Proposed Scheme of Arrangement from any Sectoral regulatory or any person/ party interested in scheme in any manner till date. The aforesaid affidavit has been filed vide Diary No.00572/2 dated 16.08.2022.

7. In response to the abovementioned notices, the statutory authorities have furnished their replies.

7.1 Registrar of Companies (RoC)/Regional Director (RD)

7.1.1. The Regional Director (RD) has filed its report along with the report of the Registrar of Companies (RoC) by Diary No. 00572/6 dated 03.04.2023. Para 10 of the Regional Director's report sets out observations of the Regional of Companies (ROC) made in their report dated 04.02.2023 which read as: -

"i. The Transferor and Transferee Companies have not filed the e-form GNL-1 on MCA 21 portal.

ii. As per section 232(3) (i) of the Companies Act. 2013, the fee, if any, paid by the Transferor Company on its authorized capital shall be set-off against any fee payable by the Transferee Company on its authorized capital subsequent to the amalgamation.

iii. No Affidavit regarding compliance of Provision of Sections 295, 297, 299 & 301 of the Companies Act, 1956 and Section 184, 185 and 189 of the Companies

Act, 2013 not furnished by the Transferor and Transferee Companies.

iv. Transferor company is a NBFC company report from RBI may be called, The attachment to e-form AOC-4 i. e. the financial statement Independent Auditor Report, Board Report etc. of the Transferee Company for the Year 2020 & 2021 filed on MCA portal are not readable, Hence, the Transferee Company may be directed to file the legible documents."

7.1.2. The petitioner Companies have filed its response to the report of the Regional Director by Diary No.00572/7 dated 10.04.2023 stating that the Petitioner Companies are Private Limited Companies and are not required to file E-Form GNL-1 on MCA 21 Portal. It is further undertaken by the Transferee Company that as per Section 232(3)(i) of the Companies Act, 2013, the fee if any, paid by the Transferor Company on its authorized capital shall be set off against any fee payable by the Transferee Company on its authorized capital subsequent to the Amalgamation. The affidavit regarding the compliance of the provisions of Sections 295, 297, 299 & 301 of the Companies Act, 1956 and Section 184, 185 and 189 of the Companies Act, 2013 is attached as Annexure A2 of Diary No.00572/7 dated 10.04.2023. The Petitioner Companies have also furnished the NOC from Reserve Bank of India which is attached as Annexure A3 of this affidavit. The Financial Statement, Independent Auditor Report, Board Report, etc. of the Transferee Company for the Year 2020-2021 is attached as Annexure A4 of Diary No.00572/7 dated 10.04.2023.

7.1.3. Thus, no adverse observation can be inferred from the report of the Regional Director/Registrar of Companies.

7.2 Income Tax Department

7.2.1 The Income Tax Department filed its report by Diary No. 229 dated 21.06.2022 in respect of the Transferee Company stating that there is an outstanding demand of Rs. 3,64,560/- under Section 143(3) for Assessment Year 2018-19 and Rs. 3,42,410/- against the Assessee Company under Section 143(1)(a) for Assessment Year 2019-20 of the Income Tax Act, 1961. It is stated that the Income Tax Department has no objection to the proposed Scheme of Arrangement.

7.2.2 In this context, We observe that this Tribunal is not shutting out the legitimate interest of the income-tax authorities to recover the lawful dues payable by the petitioner companies, and the scheme provides the savings in relation to the liabilities as well, the rights of the tax authorities remain intact, and they can proceed against the companies in accordance with the law, if any amount is found due and payable.

7.2.3 Thus, no adverse observation can be inferred from the report of the Income Tax Department.

7.3 Official Liquidator

7.3.1. The Official Liquidator has filed his report vide Diary No.00572/4 dated 18.10.2022. The Official Liquidator in its report has reproduced the information on the incorporation of the Petitioner Companies, their capital structure, shareholding, Share Exchange Ratio Proposed in the Scheme etc. It is stated that the Transferor Company will wind up without going through the process of winding up.

7.3.2. Thus, no adverse observation can be inferred from the report of the Official Liquidator.

8. The certificate of the statutory auditors with respect to the Scheme of Arrangement amongst the Petitioner Companies to the effect that the accounting treatment proposed in the Scheme of Arrangement is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles are filed as Annexures A-16 of the petition.

9. We have heard the learned counsel for Petitioner Companies and perused the record carefully.

10. In the context of the above discussion, the Scheme of Arrangement contemplated amongst the Petitioner Companies appears to be prima facie in compliance with all the requirements stipulated under the relevant sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the Scheme of Arrangement appended as Annexure -1 with the petition.

11. Notwithstanding the submission that no investigation is pending against the Petitioner Companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

12. While approving the Scheme of Arrangement as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

i. That all the properties, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Transferor Company transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company is entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts of the Transferor Company which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

v. That the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme';

vi. That the Appointed Date for the scheme shall be 01.01.2021 as specified in the scheme;

vii. That the proceedings, if any, now pending by or against the Transferor Company be continued by or against the Transferee Company;

viii. That the proceedings, if any, now pending by or against the Transferor Company be continued by or against the Transferee Company;

ix. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;

x. That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its combined authorized capital subsequent to the sanction of the 'Scheme';

xi. That the Transferee Company shall file the revised memorandum and articles of association with the Registrar of Companies, NCT of Delhi & Haryana for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Companies;

xii. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Company and Transferee Company shall be consolidated accordingly, as the case may be; and

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

13. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Arrangements) Rules, 2016 be issued after the filing of the Schedule of Properties by the petitioners within three weeks from the date of receiving a certified copy of this order.

14. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme of Arrangement duly authenticated by the Registrar of this Bench.

15. The Company Petition CP (CAA) No. 21/Chd/HP/2022 is allowed and disposed of accordingly.