(2020) 02 NCLT CK 0055

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application (CAA) No. 10 (ND) Of 2020

Mccormick Support Services Private Limited — APPELLANT

Vs

Kohinoor Speciality Foods India Private Limited — RESPONDENT

Date of Decision : 24-02-2020

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

Citation : (2020) 02 NCLT CK 0055

Hon'ble Judges : Dr. Deepti Mukesh, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Mahesh Agarwal, Rishi Agarwala, Rajeev Kumar

Final Decision : Disposed Of

Judgement

Dr. Deepti Mukesh, J

1. This is joint application filed by the applicant companies herein, McCormick Support Services Private Limited ("for brevity Transferor Company"), Kohinoor Specialty foods India Private limited ("for brevity Transferee Company"), under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants.

2. Affidavits in support of the above application sworn by Mr. Amit Mehta, the Director on behalf of all Transferor Company and by Mr. Amit Mehta being the Managing Director on behalf of Transferee Company, being the authorized signatories of the applicant companies, who have been authorized vide board resolutions dated 04.12.2019 for both the Transferor Company and Transferee Company respectively, has been duly filed, along with the application. It is also

represented that the registered office of both the applicant companies are under the domain of Registrar of Companies, NCT of New Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. The Transferor Company is a private limited company incorporated on 21st March, 2014 under the provisions of Companies Act, 2013 bearing CIN U72900DL2014FTC358168 with registrar of Companies, NCT of Delhi and Haryana under the name and style of "McCormick Support Service Private Limited" and having its registered office at Plot No. 11, Ground Floor, Sector-32, Institutional Area, Gurgaon, Haryana-122001,. On 06.06.2019 the registered office of the transferor company was shifted to "Plot No. 84, 5th Floor, Sector-32, Institutional Area, Gurugram, Haryana- 122001, copy of FORM INC-22 filed with the ROC for the change in registered address has been annexed with the present application. Further, vide certificate of registration dated 29.11.2019 the registered office of the transferor company was further shifted to "A-27, Shop No. 4, Indra Nagar, New Delhi -110033. The certificate of registration has been annexed with the application herein and the same is also reflected in the master data of applicant as per the MCA portal. The Authorized Share Capital of the Transferor Company is Rs. 65,00,000/- and the Paid-up Share Capital is Rs. 65,00,000/-.

4. The Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 25th May, 2011 vide CIN U15122DL2011PTC219766 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of "Kohinoor Specialty foods India Private limited" and having its registered office at 401, Vipps Center, Masjid Moth, Greater Kailash-II, New Delhi-110048. On 13.10.2016 the registered office of the transferor company was shifted to "A-27, Shop No. 4, Indra Nagar, and New Delhi 110033", the copy of FORM INC-22 filed with the ROC for the change in registered address is annexed with the application herein and the same is also reflected in the master data of applicant as per the MCA portal. The Authorized Share Capital of the company is Rs. 20,00,000/- and the Paid-Up Share Capital is Rs. 1,43,75,390/-.

5. The Transferor Company as well as the Transferee Company has filed their respective Memoranda and Articles of Association inter alia delineating their object clauses, as well as their last Audited Annual Accounts for the financial 31.03.2019. The provisional balance sheet as on 30th November 2019 is also annexed herewith.

6. Both the Applicant companies, vide meeting of Board of Directors held on 04th December 2019 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record.

7. It is stated that the Transferor Company is having two Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed

and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that the Company has NIL Secured Creditors and 3 Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is annexed. All three unsecured creditor have given their consent by way of affidavits holding 100% of total value. In relation to the shareholders & Unsecured Creditors, it seeks dispensing with holding/convening of the meetings as their consents affidavits are placed on record. Since there are no Secured Creditors, therefore the necessity of convening/holding a meeting does not arise.

8. It is stated that the Transferee Company is having two Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that the Company has one Secured Creditor and 219 (Two Hundred Nineteen) Unsecured Creditors, Certificate from Chartered Accountants certifying list of secured and unsecured creditors is annexed. The sole secured creditor has given its consent by way of affidavit and fifteen unsecured creditors have given their consent by way of affidavits holding 92.43% of total value. Therefore, in relation to the shareholders, secured creditor and unsecured creditors of the Company, it seeks dispensing with holding/convening of the meetings as consent affidavits are placed on record.

9. The appointed date as specified in the Scheme is 01st April, 2019 subject to the directions of this Tribunal.

10. Taking into consideration the submissions and the documents filed therewith, we propose to issue the following directions with respect to convening/holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows: -

A. In relation to the Transferor Company:

a) With respect to Equity shareholders: In view of consent affidavits, from both the equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are no Secured Creditors, therefore the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits, from all three unsecured creditors having 100% in total value, convening the meeting of Unsecured Creditors is dispensed with.

B. In relation to Transferee Company:

a) With respect to Equity shareholders: In view of consent affidavits, from both the equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: In view of consent affidavit, from the sole secured creditor having 100% in total value been filed, convening the meeting of Secured Creditor is dispensed with.

c) With respect to Unsecured Creditors: In view of consent affidavits, from fifteen unsecured creditors having 92.43% in total value been filed, convening the meeting of Unsecured Creditors is dispensed with.

11. Notice of this application shall also be served on the following:

(i) Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

(ii) Registrar of Companies at 4 floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

(iii) Official liquidator, Lok Nayak Bhavan, 8 Floor, Khan Market, New Delhi-110001;

(iv) Income Tax Department, Income Tax Office, Additional Commissioner Of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.

(v) and any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and disposed off.