(2020) 10 NCLT CK 0006

In the National Company Law Appellate Tribunal

Case No : CAA No. 38/ND Of 2020, Company Application (CAA) No. 10 (ND) Of 2020

Mccormick Support Services Private Limited Registered Office APPELLANT

Vs

Kohinoor Speciality Foods India Private Limited RESPONDENT

Date of Decision : 20-10-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232, 232(3)(i), 232(3)(i)

Citation : (2020) 10 NCLT CK 0006

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Mahesh Agarwal, Rajeev Kumar, Adeeba Mujead, Shankari Mishra

Final Decision : Disposed Of

Judgement

Sumita Puivkayastha, Member (T)

1. This petition has been filed by the Petitioner Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of Transferor Company into Transferee Company.

2. From the records, it is seen that the First Motion application was filed before this Tribunal vide CA (CAA)-10(ND)2020 and based on such application moved under Sections 230-232 of the Companies Act, 2013 and directions were issued by this Tribunal, wherein the meeting of the Equity Shareholders and Unsecured Creditors of the Transferor Company and Transferee Company were dispensed with vide order dated 24.02.2020 (corrected). In view of the absence of any Secured Creditors in the Transferor Company the necessity of convening the meeting did not arise whereas in case of the Transferee Company the meeting of the Secured Creditor was dispensed.

3. Thereafter 2nd motion petition was filed vide CAA 38 (ND)/2020 within

prescribed time limit and vide order dated 30.07.2020 the Petitioners were directed to carry out publication in the newspaper 'Business standard' (English, Delhi Edition) and 'Business Standard' (Hindi, Delhi Edition) and in addition, notices were directed to be served on to the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department, Official Liquidator and to the other relevant sectoral regulators.

4. It is seen from the records that all the Petitioners have filed an affidavit on 26.08.2020 affirming compliance of the order passed by the tribunal dated 30.07.2020. A perusal of the affidavit disclose that the Petitioners have effected the newspaper publication as directed in one issue of the 'Business Standard' (English Edition) and 'Business Standard' (Hindi Edition) both on 06.08.2020 in relation to the date of hearing of the petition. Further, the Petitioners have also affirmed that the copy of petition have been duly served upon the Registrar of Companies, Regional Director, Northern Region and Income Tax Department, Official Liquidator, in compliance of the order and in proof of the same acknowledgment from the respective offices have also been placed on record.

5. The Regional Director filed its representation dated 01.06.2020 and submitted that as per the report of the Registrar of Companies the filling position of all the petitioner companies are upto date and no prosecution has been filed against the petitioner companies and no investigation is pending. The Regional Director has made the following observation:

i. Para 9 of the report it is mentioned that the Registrar of Companies Delhi vide para 31 of its report has made an observation that "Refer to clause 21 of the scheme, the Transferee Company may kindly be directed to comply with the provision of Section 232(3)(i) if the Companies Act, 2013 in regard to fee payable on its revised authorized share capital"

The Petitioner vide Para 7 of its Affidavit filed as on 15.09.2020 undertakes that the Transferee Company shall comply with the Provisions of Section 232(3)(i) of the Companies Act, 2013 and shall pay applicable fee, if any, post the consolidation of the authorized share capital of the Transferor Company with the authorized capital of the Transferee Company.

6. The Income Tax Department has filed its report on 04.08.2020 wherein no specific objections have been raised against the approval of the scheme.

7. The Official Liquidator has filed its report on 22.08.2020 wherein no specific objections have been raised against the approval of the scheme. The report states that the Official Liquidator has not received any complaint against the proposed scheme and the affairs of the Transferor Company do not appear to have been conducted in manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/ Companies Act, 2013.

8. In the petition it has been affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 are pending against the Petitioner Companies.

9. Certificates of respective statutory auditors of all the petitioner companies have been placed on record to the effect that accounting treatment proposed in the Scheme of Amalgamation is in conformity with the accounting standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

10. In view of the foregoing, upon considering the approval accorded by the members and creditors of the petitioner companies to the proposed scheme, as well as the no objections filed by the regional director, northern region, the official liquidator, and the income tax department, there appears to be no impediment in sanctioning the present scheme. Consequently, sanction is hereby granted to the scheme under section 230 & 232 of the companies act, 2013. The petitioners however remain bound to comply with the statutory requirements in accordance with law.

11. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme, will not come in the way of action being taken, albeit, in accordance with law, against any of the concerned person, director and officials of the petitioners.

12. While approving the scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes, GST, or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

13. THIS TRIBUNAL ORDERS AS UNDER:

a) That the transferor company shall stand dissolved without following the process of winding up; and

b) That all the property, rights and powers of all the transferor company, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vests in the transferee company.

c) That Transferee Companies shall issue the 1.94 Equity shares of Rs. 10 each, for every 10 Equity Share of Rs. 10 each heid in the Transferor Company, to the shareholders of the Transferor Company.

d) That all the liabilities and duties of the all transferor company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

e) That all proceeding now pending by or against the transferor company, be continued by or against the transferee company; and

d) That all the employees of all the transferor company in service, on the date immediately preceding the date on which the scheme takes effect, i.e., the effective date shall become the employees of the transferee company on such date without any break or interruption in services and upon terms and conditions not less favorable than those subsisting in the respective transferor companies on the said date.

g) That petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Company for registration and on such certified copy being so delivered the transferor company shall stand dissolved and the Registrar of Company shall place all documents relating to all the transferor company registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

h) That any person interested shall be at liberty to apply to the tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.