(2022) 10 NCLT CK 0027

In the National Company Law Tribunal

Case No : CA (CAA)/243/MB-IV/2021

Motion Makers Animation Studio Private Limited Vs

Date of Decision : 20-10-2022

Acts Referred:

Companies Act, 2013 — Section 52, 66, 180, 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2022) 10 NCLT CK 0027

Hon'ble Judges : Kishore Vemulapalli, Member (J);Manoj Kumar Dubey, Member (T)

Bench : Division Bench

Advocate : Ranit Basu, Maitri Malde

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. The Court convened by video-conference today.

2. Learned counsel for the Transferor Company and Transferee Company ("Applicant Companies") states that the present Scheme is a Scheme of Amalgamation of Motion Makers Animation Studio Private Limited, ("the Transferor Company") with Raj Arcades Homes Private Limited ("the Transferee Company") and their respective Shareholders.

3. Counsel states that the respective Board of Directors of Transferor Company and the Transferee Company at its respective Board Meetings held on 18th June, 2021 approved the Scheme (page 189-196 of Application).

4. Counsel for the Applicants state that appointed date of Scheme of Amalgamation is 1st April, 2021.

5. The Counsel for the Applicants submit that the Transferor Company is a wholly owned Subsidiary of Transferee Company.

6. The Counsel for the Applicants submit that the Applicant No.1 is engaged in the business of production of films amongst other things. The Applicant No.2/

Transferee Company is engaged in the business of building, developing and constructing properties and its ancillary business includes production, distribution and exhibition of films.

7. The Rationale for the Scheme is as under:

(i) Motion Makers Animation Studio Private Limited is a Wholly Owned Subsidiary of Raj Arcades Homes Private Limited. Both the Companies are closely held and are owned, managed and controlled by the management of Raj Arcades Homes Private Limited, the Transferee Company. The Transferor Company is engaged in the business of production of films amongst other things and the Transferee Company is in business of building, developing and constructing properties and its ancillary business includes production, distribution and exhibition of films. Transferee Company plans to undertake various advertising projects in regards to its real estate schemes and due to logistical issues in allotting those projects to the Transferor Company, the present Amalgamation is sought. Amalgamating the Transferor Company with the Transferee Company shall ensure that the Transferee Company can effectively manage advertising and promotion of projects for its real estate schemes and the same is permitted in the Memorandum of Association and Articles of Association of the Transferee Company. It will ensure effective utilization of assets and know-how of the Transferor Company by the Transferee Company.

BENEFITS OF THE RESTRUCTURING: Benefits arising out of the restructuring are as follows:

(i) Reduction of overheads facilitates administrative convenience, enables cost saving and ensures optimum utilization of resources.

(ii) Simplification of corporate structure through absorption of the Transferor Company by the Transferee Company.

(iii) It will provide the benefit of operational synergies to the combined entity, which can be put to the best advantage of the stakeholders.

(iv) It will enable optimum utilization of funds and resources.

(v) Improved organizational capability and leadership, arising from the pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.

(vi) Greater efficiency in cash management and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and to maximize shareholder value.

(vii) The balance sheet of the combined entity would reflect the true picture upon writing off the accumulated losses, if any.

8. The Authorised and Paid-up Share Capital of the Applicant No. 1 in a is as follows:

Particulars

Amount in Rs.

Authorised Capital.

5,000 Equity Shares of Rs.100/- each.

5,00,000

Total

5,00,000

Issued, Subscribed and Paid- up Capital.

1,000 Equity Shares of Rs.100/- each fully paid up.

1,00,000

Total

1,00,000

9. The Authorised and Paid-up Share Capital of the Applicant No. 2 is as follows:

Particulars

Amount in Rs.

Authorised Capital.

25,00,000 Equity Shares of Rs.10/- each.

2,50,00,000

Total

2,50,00,000

Issued, Subscribed and Paid- up Capital.

24,65,000 Equity Shares of Rs.10/- each fully paid up.

2,46,50,000

Total

2,46,50,000

10. Upon the Amalgamation of the Applicant Companies, the Authorised Share Capital of the Transferee Company/Applicant No.2 will be as under:

Particulars

Amount in Rs.

Authorised Capital.

25,00,000 Equity Shares of Rs.10/- each.

2,50,00,000

5,000 Equity Shares of Rs.10/- each.

5,00,000

Total

2,55,00,000

11. The Financials of the Applicant no. 1 company are as follows:

As on 31st March, 2020

As on 31st March, 2021

Net-worth/ Revenue

Rs.6,95,038/- (Rupees six lakhs ninety-five thousand thirty-eight only)

Rs.6,93,838/- (Rupees six lakhs ninety-three thousand eight hundred thirty-eight only)

Turn-over

NIL

NIL

12. The Financials of the Applicant no. 2 company are as follows:

As on 31st March, 2020

As on 31st March, 2021

Net-worth/ Revenue

Rs.17,21,16,289/-

(Rupees seventeen crore twenty-one lakh sixteen thousand two hundred eighty-nine only)

Rs.17,25,35,788/-

(Rupees seventeen crore twenty-five lakh thirty-five thousand seven hundred eighty- eight only)

Turn-over/ Revenue (calculated using project completion method)

Rs.80,42,69,660/-

(Rupees eighty crore forty-two lakh sixty- nine thousand six hundred sixty only)

Rs.29,74,08,661/-

(Rupees twenty-nine crore seventy-four lakh eight thousand six hundred sixty-one

only)

13. Equity Shareholders of Applicant No. 1/Transferor Company having number and percentage of shares is as follows:

Name of shareholders	Shareholding (%)	Number of shares
Basantraj Sethia	0.1%	1
Raj Arcades Homes Pvt. Ltd.	99.9%	999
TOTAL	100.00%	1,000

14. The Applicant No. 1/Transferor Company has 2 (two) Equity Shareholders. They have given their consent to the Scheme by way of Affidavits. These are placed at page no. 197-203 of the Application. In view of this, the meeting of the equity shareholders of the Transferor Company is dispensed with.

15. Equity Shareholders of Applicant No.2/Transferee Company, having number and percentage of shares in a tabular format is as follows

Name of shareholders	Shareholding (%)	Number of shares
Rajesh Savla	24.645	607500
Ashwin Mistry		

24.645

607500

Basantraj Sethia

50.710

1250000

TOTAL

100.00

24,65,000

16. The Applicant No.2/Transferee Company has 3 (three) Equity Shareholders. All of them have given their consent to the Scheme by way of Affidavits. These are placed at page no. 204 - 212 of the Application. In view of this, the meeting of the equity shareholders of the Transferee Company is dispensed with.

17. That Counsel for the Applicant Companies submit that there are no Secured Creditors in the Transferor Company.

18. There are 4 (four) Unsecured Creditors in the Applicant No.1/Transferor Company amounting to Rs.40,78,79,744/-. The details of the same have been placed at page no. 213 of the Application. Since the present Scheme does not involve an arrangement with creditors and there will be no diminution of the liability of the Applicant No.1/ Transferor Company towards the said Unsecured Creditors, meeting of the Unsecured Creditors of the Applicant Company No. 1/ Transferor Company be dispensed with. However, individual notice to the said Unsecured Creditors shall be issued by the Applicant Company 1/ Transferor Company enclosing a copy of the Scheme by Registered Post-AD/Speed Post and Email whose Email IDs are registered with the Applicant No.1/Transferor Company and the Applicant Company shall file an affidavit to that effect, clearly indicating therein that in case of any objections, they shall file the same before this Tribunal within thirty days from the date of receipt of the letters.

19. There is one Secured Creditor for the value of Rs.3,38,00,000/- and there are 475 Unsecured Creditors for the value of Rs.3,20,42,35,766/- in the Applicant No.2/Transferee Company. The list of which is placed at page no. 214 – Exhibit J.

20. This Bench directs the Transferee Company to file the Consent of sole Secured Creditor of the Transferee Company at the time of filing of the Company Scheme Petition. Further, this Bench directs the Transferee Company to issue Notice by Registered Post-AD/Speed Post and by E-mail to all its Unsecure Creditors whose E-mail IDs are duly registered with the Transferee Company.

21. The Applicant Companies submit that:

a) Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Transferee Company will not be affected since there will be no issuance of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Transferee Company.

b) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company will continue to remain highly positive post-merger.

c) The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to the Scheme.

d) No undertaking of the Transferor Company is being parted away or being disposed-off and hence provision of section 180 of the Companies Act, 2013 is also not applicable.

22. The Applicant Companies to serve the notice of the present Application, complete with enclosures on:

i. The Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai;

ii. Registrar of Companies, Mumbai;

iii. Concerned GST Authorities;

iv. Real Estate Regulatory Authority concerned, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. The Applicant Companies to serve the notice of the present Application complete with enclosures on the following Income Tax Authorities within whose jurisdiction the respective applicant companies are assessed to tax clearly indicating PAN of the concerned Company, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:

Name of Company

PAN

Income Tax Jurisdiction

Transferor Company

AAHCM3711E

Area Code: MUM

AO Type: W

AO Number: 91

Range Code: 443

Jurisdiction: WARD 12(3)(1), MUMBAI

Email Id: mumbai.ito12.3.1@incometa x.gov.in Building Name: AAYAKAR BHAWAN, MUMBAI

Transferee Company

AAFCR6616R

Area Code: MUM

AO Type: C

AO Type: C AO Number: 92

Range Code: 553

Jurisdiction: CIRCLE 13(3)(2), MUMBAI/

Email Id:

mumbai.dcit13.3.2@incomet ax.gov.in Building Name: AAYAKAR BHAWAN, MUMBAI

If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme under Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

24. Additionally, the Applicant No.1/Transferor Company is directed to serve notice through by Registered Post-AD/ Speed Post and Hand Delivery with copy of the Scheme upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Bagaria & Company LLP, Chartered Accountants, having address at 701, Standford, Junction of S.V. Road and C. D. Burfiwala Lane, Andheri (West), Mumbai-400058, Contact: 9820511363, E-mail: rahul@bagaria.com; to assist the Official Liquidator to scrutinize the books of accounts of the said Applicant No.1/Transferor Company for the last 5 years and submit its representation/ report to the Tribunal. The aforesaid Companies to pay consolidated fees of Rs.2,00,000/- plus applicable taxes, if any for this purpose. If no representation /

response is received by the Tribunal from Official Liquidator, High Court, Bombay within a period of 30 days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation/ objection.

25. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving to notice to all the Regulatory Authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

26. Order accordingly.

