(2024) 04 NCLT CK 0033

In the National Company Law Tribunal

Case No : CP(CAA)/238/MB/2023 In CA(CAA)/3377/MB/2019

Mrunmai Properties Limited Vs

Date of Decision : 10-04-2024

Acts Referred:
Companies Act, 2013 — Section 230, 232, 232(3)(i), 232(6)

Citation : (2024) 04 NCLT CK 0033

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Hemant Sethi & Co, Aparna Mudia,

Final Decision : Disposed Of

Judgement

1. Heard the Learned Counsel for the Petitioner Companies and the authorised representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition, except as otherwise stated hereunder.

2. The sanction of this Tribunal is sought under Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 to the said Scheme of Amalgamation of Mrunmai Properties Limited (‘Transferor Company’) with Palchin Real Estates Private Limited (‘Transferee Company’) and their respective shareholders (‘Scheme’).

3. The Petitioner Companies have approved the Scheme by passing Board Resolutions at their respective board meetings held on 19 August 2019 and have approached the Tribunal for sanction of the Scheme.

4. The proposed amalgamation will result in organizational efficiencies, reduction in overheads, administrative, operational costs and other expenses along with optimal utilization of various resources, prevention of cost duplication, creation of synergy thereby increasing operation efficiency and integrating business functions.

5. The First Petitioner Company is engaged in the business of development of real estate and the Second Petitioner Company is engaged in the business of real estate development.

6. The Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted by the Petitioner Companies.

7. Consideration: The entire issued, subscribed and paid up share capital of the Transferor Company is held by the Transferee Company. Upon the Scheme becoming effective, the entire equity share capital of the Transferor Company held by the Transferee Company shall stand automatically cancelled and there will not be any issue and allotment of equity shares by the Transferee Company.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 27th May 2020 making certain observations ("Report"). The Petitioner Companies have submitted/undertaken that:

a. The Scheme is in accordance with provisions of Section 232(6) of the Companies Act, 2013 and in compliance with the applicable requirements of the Circular no. F. No. 7/12/2019/CL-1 dated 21-08-2019 issued by the Ministry of Corporate Affairs;

b. The provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Transferor Company on its authorized share capital shall be set off against any fees payable by the Transferee Company on increase of its authorized share capital subsequent to the amalgamation.

c. The Scheme enclosed to Company Application & Company Petition, are one and the same and there is no discrepancy/any change/changes are made.

d. The First Petitioner Company has applied for RERA registration, in relation to proposed projects real estate to be undertaken. Further, the Second Petitioner Company is not required to get registered with RERA as they do not have any ongoing projects.

9. The Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company and is acceptable to them. Hence, the Regional Director does not have any further objection to the proposed Scheme Company Petition.

10. As per the observation of the Regional Director, the Petitioner Companies have amended the Accounting Treatment in the Scheme. The Board of Directors of the respective Petitioner Companies have passed the Board Resolution taking on board the amended Accounting Treatment in the Scheme. The Second Petitioner Company has also obtained the Auditor Certificate for the amended

Accounting Treatment in the Scheme.

11. The Petitioner Companies have submitted the latest Board Resolutions passed by the respective Petitioner Companies, the latest Auditor Certificate with this Tribunal by way of Additional Affidavit dated 18 December 2023.

12. The Official Liquidator has filed his report dated 31 October 2023 and has submitted that the affairs of the Transferor Company have been conducted in proper manner.

13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, Company Petition CP(CAA)/238/MB/2023 connected with CA(CAA)/3377/MB/2019 is made absolute in terms of prayer in the Company Scheme Petition.

14. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is fixed as 1 April, 2019. The Transferor Company be dissolved without winding up.

15. All the assets and liabilities including taxes and charges, if any and duties of the Transferor Company, shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the assets, liabilities and duties of the Transferee Company.

16. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

17. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-Form INC-28, within 30 days from the date of receipt of the order by the Registry, duly certified by the Deputy/ Assistant Registrar of this Tribunal.

18. The Petitioner Companies are directed to lodge a certified copy of this Order and the Scheme duly certified by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps for adjudication of stamp duty payable, if any, within 60 working days from the date of receipt of certified copy of the certified order from the Registry of this Tribunal.

19. All concerned regulatory authorities to act on a copy of this Order duly certified by the Deputy Registrar/Assistant Registrar of this Tribunal along with copy of the Scheme.

20. Ordered accordingly. CP(CAA)/238/MB/2023 is allowed and disposed of. File to be consigned to records.