
(2023) 05 NCLT CK 0085
In the National Company Law Appellate Tribunal
Case No : CA(CAA) 39/ND/2022
M/s Arudhara Infraprojects Pvt. Ltd & Ors Vs

Date of Decision : 29-05-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232

Citation : (2023) 05 NCLT CK 0085

Hon'ble Judges : Bachu Venkat Balarm Das, Member (J); Rahul Bhatnagar, Member (T)

Bench : Division Bench

Advocate : Rajeev K Goel, Kartikeya Goel

Final Decision : Disposed Of

Judgement

Rahul Bhatnagar, Member (Technical)

1. This application has been filed by the Applicant Company under Sections 230 to 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 the Transferor Companies into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.

2. The Applicant Company No. 1/Transferor Company No. 1- M/s. Arudhara Infraprojects Pvt. Ltd. bearing Corporate Identification No. (CIN): U70101DL2014PTC 387331 was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 21st February, 2014, having its registered office at Office No. 204, S-561, Bhagwati Complex, Second Floor, School Block, Shakarpur, Delhi-110092.

3. The Applicant Company No. 2/ Transferor Company No. 2- M/s. Dhanvan Industries Pvt. Ltd. is a private limited company incorporated on 19th February, 2014, under the provisions of Companies Act, 1956 bearing CINU74999

DL2014PTC386310 of Registrar of Companies, NCT of Delhi and Haryana and having its registered office at Office No. 204, S-561, Bhagwati Complex, Second Floor, School Block, Shakarpur, Delhi- 110092.

4. The Applicant Company No. 3/ Transferor Company No. 3- M/s. Five Star Infra and Projects Pvt. Ltd. bearing Corporate Identification No. (CIN): U70109DL2013PTC 386351 was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 24th December, 2013, having its registered office at No. 204, S-561, Bhagwati Complex, Second Floor, School Block, Shakarpur, Delhi-110092.

5. The Applicant Company No. 4/ Transferor Company No. 4- M/s. King Engineers Pvt. Ltd bearing Corporate Identification No. (CIN): U74999DL2013PTC388120 was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 24th December, 2013, having its registered office at No. 204, S-561, Bhagwati Complex, Second Floor, School Block, Shakarpur, Delhi- 110092.

6. The Applicant Company No. 5/ Transferor Company No. 5- M/s. Big Infraprojects Pvt. Ltd. bearing Corporate Identification No. (CIN): U70109DL2013PTC387656 was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 24th December, 2013, having its registered office at No. 204, S-561, Bhagwati Complex, Second Floor, School Block, Shakarpur, Delhi- 110092.

7. The Applicant Company No. 6/Transferee Company-M/s. Rite Heavy Machines Pvt. Ltd is a private limited company incorporated under the provisions of Companies Act, 1956 on 24th December, 2013 vide CIN: U74999DL2013 PTC388187 with Registrar of Companies, NCT of Delhi & Haryana and having its registered office at No. 204, S-561, Bhagwati Complex, Second Floor, School Block, Shakarpur, Delhi- 110092.

8. From the records, it is seen that the First Motion application was filed before this Tribunal vide C.A.(CAA)/15/(ND)2022. Vide order dated 17.03.2022, the meetings of Equity Shareholders and Secured/Unsecured Creditors of all the Applicant Companies were dispensed with.

9. The Applicant Companies were directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in 'Business Standard' English edition as well as Hindi edition, both dated 08.10.2022. In addition to the public notice, notices were served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

10. Pursuant to the notice issued to the Regional Director, RoC, and Official Liquidator, they have filed their response/reply in the matter.

11. The Regional Director had raised certain objections to the scheme which were duly addressed by the Petitioner Companies. The Regional Director in its report dated 17.02.2023 has not raised any further objections to the scheme.

12. The Official Liquidator has filed its report dated 19.01.2023 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

13. No one appeared on behalf of the Income Tax Department on any of the date of hearing. The Petitioner Companies have filed the report of the Income Tax Department with respect to all the 6 Companies. We have seen the report of the Income Tax Department in which they have no objection in respect of all the Applicant Companies which are the subject matter of these proceedings. Further, the Transferee Company has filed an affidavit dated 21.02.2023 whereby it has undertaken that the Transferee Company shall pay any outstanding dues towards income tax and shall meet the tax liability if any demanded from the Transferor Company or the Transferee Company as per laws.

14. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

15. Certificate of the Statutory auditor of the Petitioner Companies has 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.

16. The shareholders of the Applicant Companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

i. It has also been affirmed in the petition that the Scheme is in the interest of the Transferor Companies and the Transferee Company, including their shareholders, creditors, employees and all concerned.

ii. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and

the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.

A. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

B. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

C. 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 the concerned persons, directors and officials of the petitioners.

D. 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 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.

E. THIS TRIBUNAL DO FURTHER ORDER:

1. That the Transferor Companies shall stand dissolved without following the process of winding-up; and

2. That all the property, rights and powers of the Transferor Companies, 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 vest in the Transferee Company.

3. That all the liabilities and duties of the Transferor Companies, 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

4. That all proceedings now pending by or against the Transferor Companies, be continued by or against the Transferee Company; and

5. That all the employees of the Transferor Companies 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 service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Company on the said date.

6. 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 Companies for registration and on such certified copy being so delivered, the

Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies 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

7. 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 off on the above terms.

Let copy of the order be served to the parties.