
(2023) 07 NCLT CK 0019
In the National Company Law Tribunal
Case No : CP(CAA)/20(ND)/2023
M/s Harita Fehrer Limited Vs

Date of Decision : 13-07-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(1), 230(7), 232, 232(2)

Citation : (2023) 07 NCLT CK 0019

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J); Atul Chaturvedi, Member (T)

Bench : Division Bench

Advocate : P. Nagesh, Naresh Kumar, Zobeb Hussain, Sanjeev Menon, Shankari Mishra

Final Decision : Disposed Of

Judgement

Atul Chaturvedi, Member (Technical)

1. The present Second Motion Petition is filed jointly by the M/s. Harita Fehrer Limited (Petitioner Company No. 1/ Transferor Company), M/s. Minda Storage Batteries Private Limited (Petitioner Company No. 2/ Demerged Company) and M/s. Uno Minda Limited (Formerly known as Minda Industries Limited) (Petitioner Company No. 3/ Transferee Company/Resulting Company) under Sections 230-232 of the Companies Act, 2013 (Act) read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Rules) for the Sanction of the Proposed Scheme of Amalgamation between the Transferor Company, Demerged Company and Transferee Company/Resulting Company and their respective shareholders and creditors (Scheme). The Proposed Scheme provides for the Amalgamation of (i) Transferor Company with the Transferee Company and (ii) Demerger of the Demerged Undertaking (as defined in the Scheme) of the Demerged Company and vesting of the same with the Resulting Company, on a going concern basis.

The Registered office address of each Petitioner Company is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.

2. M/s. Harita Fehrer Limited (Petitioner Company No. 1) bearing CIN U25200DL2008PLC398163 incorporated on 09.07.2008 and registered office address of the Petitioner Company No. 1 is presently situated at B-64/1 Wazirpur Industrial Area, West Delhi - 110052. The Authorized Share Capital of the Petitioner Company No. 1 is Rs. 20,10,00,000/-. The Issued, Paid-up and Subscribed Capital of the Petitioner Company No. 1 is Rs.20,09,80,400 /-.

3. M/s. Minda Storage Batteries Private Limited, (Petitioner Company No. 2) bearing CIN U35900DL2011PTC228383 incorporated on 07.12.2011 and registered office address of the Petitioner Company No. 2 is presently situated at B-64/1 Wazirpur Industrial Area, West Delhi - 110052. The Authorized Share Capital of the Petitioner Company No. 2 is Rs.190,00,00,000/-. The Issued, Paid-Up and Subscribed Capital of the Petitioner Company No. 2 is Rs.188,60,00,000/-.

4. M/s. Uno Minda Limited (Petitioner Company No. 3) bearing CIN: L74899DL1992PLC050333 was incorporated on 16.09.1992 and the registered office address of the Petitioner Company No. 3 is presently situated at B-64/1 Wazirpur Industrial Area, West Delhi - 110052. The Authorized Share Capital of the Petitioner Company No. 3 is Rs.511,69,20,500 /-. The Issued, Paid-Up and Subscribed Capital of the Petitioner Company No. 3 is Rs.114,52,73,460 /-.

5. It is stated that the Transferee Company viz., M/s. Uno Minda Limited (Formerly known as Minda Industries Limited) has moved the necessary second motion Petition being CP (CAA) – 20(ND)/2023 on 03.02.2023, connected with the first motion Application being CA (CAA) – 98 (ND)/ 2022, before the National Company Law Tribunal, New Delhi.

6. The Board of Directors of the Transferor Companies in their respective meetings dated 24.05.2022 considered and unanimously approved the proposed Scheme.

A Copy of the extract of the Resolution dated 24.05.2022, passed by the Board of Directors of the Transferor Company, inter alia, approving the Scheme and the filing thereof with this Tribunal and Resolution dated 10.08.2022, passed by the Board of Directors of the Transferor Company for addition in Authorised signatory for representing and signing with respect to the Scheme of Arrangement is filed along with the Petition.

7. The rationale for, and the benefits of, the Scheme of arrangement for amalgamation of the Transferor Company and Demerger of Demerged Company with the Transferee Company are as follows:

A. Rational of Part-II of the Scheme providing for amalgamation of Transferor Company:

i. Transferor Company ("HFL") is a wholly-owned subsidiary Company of M/s. Uno Minda Limited ("UNO MINDA"), two/three wheeler seats, PU composites, MCU and interior modules and some of its products such as PU foam are required for

the manufacture of seats by the Seating division of UNO MINDA hence, consolidation of HFL by way of proposed amalgamation would lead to avail synergy's benefit like smooth functioning and to manage the operations effectively, efficient utilization of capital and help to achieve a streamlined structure by eliminating multiple entities.

ii. The proposed amalgamation will lead to the elimination of multiple administrative functions and record-keeping and enhance operational efficiencies, thus resulting in reduced compliance and administrative costs.

iii. The proposed amalgamation will lead to greater efficiency in fund management and deployment for the combined entity and unfettered access to cash flows generated by the businesses which can be deployed more efficiently for funding growth opportunities to maximize Members' value.

iv. The Scheme shall be in the beneficial interest of the Members and Creditors of each party of the Scheme and shall not be in any manner prejudicial to the interest of the concerned Members, creditors, employees and/or any other person(s) whether interested or not.

v. The Scheme of Arrangement will result in the establishment of a larger company with large resources and a larger capital base and a greater capacity to raise funds for expansion, modernization and development of the businesses of the companies concerned.

vi. The Scheme would be beneficial to and in the best interest of the shareholders & creditors, if any, of HFL and UNO MINDA. The Scheme shall not in any manner be prejudicial to the interests of concerned shareholders/creditors and the general public at large.

B. Rational of Part III of the Scheme providing for amalgamation of Demerged Undertaking of the Demerged Company ("MSBPL"):

i. MSBPL is a wholly owned subsidiary of UNO MINDA and is engaged in the business of manufacturing batteries for two-wheeler, four-wheelers and industrial batteries in the automotive sector. The products of MSBPL apart from supplies to other customers are also sold by the Aftermarket division of UNO MINDA.

ii. The proposed scheme of demerger of domestic business of MSBPL and vesting into UNO MINDA shall result in the expansion of the business of UNO MINDA in the growing markets of India, thereby creating greater value for the shareholders/stakeholders of UNO MINDA.

iii. The combination of the Demerged undertaking with UNO MINDA is a strategic fit for serving the existing market and for catering to additional volume linked to new consumers as the products of MSBPL synergies well with the products of UNO MINDA.

iv. The proposed restructuring will lead to greater efficiency in fund management and deployment for the combined entity, and enhance competitive strength,

achieve cost reduction and productivity gains by pooling the technologies and resources of the MSBPL and UNO MINDA thereby significantly contributing to the future growth and maximizing shareholders value.

v. The Scheme would be beneficial to and in the best interest of the shareholders & creditors, if any, of MSBPL and UNO MINDA. The Scheme shall not in any manner be prejudicial to the interests of concerned shareholders/ creditors and the general public at large.

8. This Tribunal by its order dated 25.01.2023 dispensed with the requirement to convene the meetings of the Equity Shareholders and Creditors of the Transferor Companies and dispensed with the requirement to convene the meetings of the Equity Shareholders Preference Shareholders, Secured Creditors, Unsecured Creditors of Petitioner Companies, as sought through first motion application.

9. The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices. This Tribunal vide order dated 27.02.2023 directed to issue notice to the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Delhi and Haryana, Ministry of Corporate Affairs, Official Liquidator and the Income Tax Department who shall be affected by the proposed Scheme and to such other Objector(s), if any, and also directed that the notice be published in two newspapers i.e., Business Standard (English) and Jansatta (Hindi) Delhi Edition and further directed that notice along with a copy of this petition be served on the Securities Exchange Board of India, BSE Limited (Stock Exchange), National Stock Exchange of India (Stock Exchange), Competition Commission of India in addition to the other Authorities.

10. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 15.03.2023 by confirming that the aforesaid Notices of the present Company Petition were published on 06.03.2023 in Business Standard (English) and Jansatta (Hindi) newspapers Delhi edition.

It was further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities as per the direction given by this Tribunal dated 27.02.2023.

11. The Income Tax Department vide its report dated 10.04.2023 submitted to this Tribunal stating therein that they have no objection with respect to the present Scheme of arrangement but have made certain observations. The petitioner companies filed reply dated 24.04.2023 in response to the observations made by Income Tax Department, wherein the petitioner companies gave an undertaking to appropriately comply with the observations made by the Income Tax Department.

12. The Regional Director along with the Registrar of Companies vide its report dated 21.03.2023 has not objected to the proposed scheme of the arrangement

but has made certain observations. The petitioner companies filed reply dated 24.04.2023 in response to the observations made by the Regional Director, wherein the petitioner companies gave an undertaking to appropriately comply with the observations made by the Regional Director.

13. The Official Liquidator vide it's report dated 21.03.2023 submitted to this tribunal stating therein that they have no objection with respect to the present scheme of arrangement.

14. A Certificate dated 22.08.2022 issued by S.R. Batliboi & Co LLP, Chartered Accountants, the statutory auditor of the Transferor Company certifies that the accounting treatment in the books of Transferor Company is not required in respect of amalgamation with Transferee Company as provided in the Scheme as upon the Scheme becoming effective, the Transferor Company shall cease to exist and accordingly, a report confirming the accounting treatment in the books of the Transferor Company in respect of its amalgamation with the Transferee Company is not required and has been filled along with this petition.

15. A certificate dated 24.05.2022 issued by B S R & CO LLP, Chartered Accountants, the statutory auditor of the Demerged Company, the Transferee Company/Resulting Company in terms of the provisos to Sections 230(7) and 232(3) of the Act, certifies that the accounting treatment provided for in the Scheme is in conformity with the accounting standards specified under Section 133 of the Act and has been filed along with the petition.

16. No investigation proceedings have been instituted and are pending in relation to either of the Petitioner Companies under Sections 235 to 251 of the Act or under Sections 206 to 229 (Chapter XIV) of the Act. To the knowledge of each of the Petitioner Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or insolvency proceedings have been filed/instituted and are pending against either of the Petitioner Companies. None of the directors of the Petitioner Companies have any material interest in the Scheme except to the extent of their directorships and shareholding in the Petitioner Companies. This Joint Second Motion Petition is made bona fide and in the interest of justice and no one will be prejudiced if orders are made/or directions are given as prayed for.

17. Analysis and Finding

i. After considering the reports, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and creditors of the Transferor Companies and the Transferee Company and the Scheme will be beneficial to the Transferor Companies, Transferee Company and their respective shareholders and creditors.

ii. The shareholders of the petitioner company are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Tribunal for the reason that it is not a part of the

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.

iii. It has also been affirmed in the petition that the Scheme is in the interest of both the Demerged Company and the Resulting Company, including their shareholders, creditors, employees and all concerned.

In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

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

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

ii. Notwithstanding the above, if there is any deficiency found or, the 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 in accordance with the law, against the concerned persons, directors and officials of the petitioners.

iii. 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.

iv. In compliance with the requirement of Section 230 (1) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation filed stated in Form CAA 8 along with the required fee as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

v. The appointment date as proposed in the Scheme of Arrangement i.e., 01.04.2022 by the Petitioner Company is confirmed by this Tribunal.

19. This Tribunal does further order: -

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

ii. That all properties, rights and powers of Demerged Undertaking be transferred without further act or deed to the Resulting Company and accordingly, the same shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vested in the Resulting Company for all intents, purposes and interest of the

Demerged Undertaking subject nevertheless to all changes now affecting the same; and

iii. That all the liabilities, (if any) and powers, engagements, obligations and duties of the Demerged Undertaking shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Resulting Company and accordingly the same become the liabilities and duties of the Resulting Company; and

iv. That all proceedings now pending by or against the Transferor Company and Demerged Undertaking shall be continued by or against the Resulting Company; and

v. 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 Companies on the said date; and

vi. That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Demerged Undertaking shall be deemed to be transferred; and

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

20. Accordingly, the Scheme stands sanctioned and CP(CAA)/20 (ND)/2023 stands disposed of in the above terms.

Let copy of the order be served to the parties.