
(2021) 02 NCLT CK 0038

In the National Company Law Appellate Tribunal

Case No : CAA No. 17/ND Of 2020

M/s Harita Limited And Ors.

APPELLANT

Vs

M/s Minda Industries Limited

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Income Tax Act, 1961 — Section 72(A)
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2021) 02 NCLT CK 0038

Hon'ble Judges : P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with the Company

(Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving

the Scheme of Amalgamation, as contemplated between the Transferor Companies with Transferee Company.

2. It is represented that the registered office of the Transferee Company lie within the jurisdiction of this Tribunal.

Further it is pertinent to mention that the registered offices of all the Transferor Companies are in Chennai. Hence, NCLT Chennai bench has the

jurisdiction to entertain the same.

3. A perusal of the petition discloses that the Board of Directors on 14.02.2019 of the Transferor Companies (Applicant Nos.1 to 5) and Transferee

Company had jointly filed the first motion application bearing C.A. No. (CAA)130/ND/2019. The Tribunal vide its order dated 24.09.2019 directed to

convene the meetings of the equity shareholders, unsecured creditors.

In compliance with the directions issued by this Tribunal, the Applicant Company has held the meetings as directed on 25.11.2019 and to which effect

the Chairperson appointed by this Tribunal has also filed his report, submitting that the proposed Scheme was unanimously approved without modification.

4. The report of the statutory auditors certifying that the Accounting Standards dated 10.07.2019 as required u/s 133 of the Companies Act 2013 had

been adhered to is on record. The Audited Financial Statements for the year 31.03.2019 of the applicant company have been filed.

5. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of

Shares & Share Exchange Ratio issued by Bansilal S. Mehta & Co. & SSPA & Co., as per the settled principles of valuation viz, based on the net asset

value of each company.

6. The applicant company have now initiated the Second Motion. An affidavit dated 19.10.2020 discloses that the petitioners have effected publication

in the daily newspapers ""Business Standard"" in English and ""Jansatta"" in Hindi, (Delhi Edition) both dated 29.09.2020 inviting objections if any to the

proposed Scheme of Amalgamation. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of

Companies, Regional Director, Northern Region, Income Tax Dept. and the Official Liquidator in compliance with the order of the Tribunal.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us.

Additionally, it has been deposed that no objection to the proposed Scheme has been received by the applicant companies or their counsel. The replies

of the Regional Director, NR, CA, Report of Official Liquidator as well as the response of the IT Dept. have been placed before us.

7. We have heard the counsels for the petitioners and also considered the representation made by the Regional Director, Northern Region. In the reply

filed by the Regional Director (NR), it has been confirmed that the Transferor and Transferee companies are regular in filing their statutory returns.

No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted in respect of the applicant companies.

Further in their report, they have stated that they have no objection to the sanction of the proposed scheme.

8. The Income Tax Department filed its representation with National Company Law Tribunal, New Delhi. The only observation raised by the IT dept

is that the petitioner company submits an undertaking in terms of Sec 72(A) to meet the tax liabilities arising out of accumulated loss and depreciation

of the amalgamating company. That apart no serious objection against the sanctioning of the Scheme has been raised by the department.

In respect to the compliance of Section 72(A) of the Income Tax Act, 1961, the petitioner company has filed an undertaking vide affidavit dated

12.08.2020 confirming that:

In Compliance of Order dated 31st July, 2020 in CAA 17(ND)2020 issued by the Court VI of this Hon'ble NCLT, New Delhi Tribunal, the

transferee Company undertakes hereby, in accordance with Section 72A of the Income Tax Act 1961 that any tax liabilities arising out of

the accumulated loss and the unabsorbed depreciation of the Transferor Companies shall be deemed to be the loss or, as the case may be,

allowances for unabsorbed depreciation of the Transferee Company for the previous year in which the amalgamation was effected, and

further that the Transferee Company shall comply with the requirements set out in Section 72A of the IT Act".

In view of the submission made and in the interest of the revenue, it is clarified that there shall be no limitation on the power of the Income tax

Department for initiation of proceedings and recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.

9. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and no

objections being raised by the office of the Regional Director or the Income Tax Dept, there appears to be no impediment in granting sanction to the

Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of

amalgamation shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners

shall also be bound to comply with the statutory requirements in accordance with law.

10. 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 both the petitioner companies.

11. 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, Statutory dues or any other charges, if any, and payment in accordance with law or in respect to any pei mission/ compliance

with any other requirement which may be specifically required under any law.

12. This tribunal doth further order that upon scheme of Amalgamation by way of Merger coming into effect;

a. That Transferor Companies shall stand dissolved without being would up.

b. That the entire business, properties and assets 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 vest in the Transferee company, but subject nevertheless to

all charges now affecting the same;

c. That all the assets and liabilities including Income Tax and all other Statutory dues, if any, 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

liability and duty of the transferee company;

d. All employees of the Transferor Companies in service on the effective date shall become the employees of the Transferee Company on and from

such date without any break or interruption in service and upon terms and conditions not less favorable than those subsidiary with the Transferor

Company on that date.

e. That all proceedings now pending by or against the transferor companies, be continued by or against the transferee company;

13. That petitioners 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 company and registered with them and shall consolidate the files of the companies, is accordingly

duly approved and sanctioned in terms of the above.

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

15. The petition stands disposed of in the above terms. Let copy of the order be served to the parties.